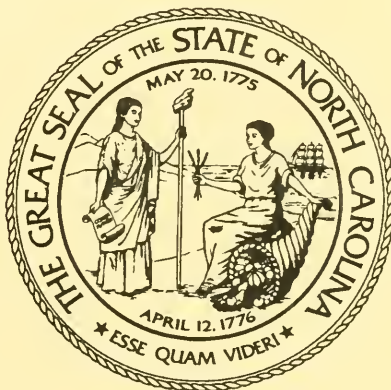


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LEGISLATIVE RESEARCH COMMISSION

REVENUE LAWS



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REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA
1991 SESSION

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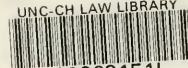


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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



December 14, 1990

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on revenue Laws. The report was prepared by the Legislative Research Commission's Revenue Laws Study Committee pursuant to Section 2.1(12) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Mavretic", written over a horizontal line.

Josephus L. Mavretic
Speaker

A handwritten signature in dark ink, appearing to read "Henson P. Barnes", written over a horizontal line.

Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

1989-1990

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner." (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of the revenue laws was authorized by Section 2.1(12) of Chapter 802 of the 1989 Session Laws. That act states that the Commission may consider House Joint Resolution 3 and Senate Bill 1298 in determining the nature, scope, and aspects of the study. House Joint Resolution 3, introduced by Representative Daniel T. Lilley in the 1989 Session, gives the Legislative Research Commission's study of the revenue laws a very broad scope, stating that the "Commission may review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable." In addition, the second edition of Senate Bill 1298 adopted in the 1989 Session recommends a study of "the need for additional local government revenue sources to supplement the property tax, local sales and use taxes, and other existing revenue sources." Chapter 970 of the 1989 Session Laws and Sections 2.5 and 2.6 of Chapter 1078 of the 1989 Session Laws, enacted during the 1990 Session, authorize the Legislative Research Commission to study additional topics relating to the revenue laws: the constitutionality of sales and use taxes on mail order sales, the need to restructure the State's budget process and shorten legislative sessions, and the continuing need for existing inheritance tax exemptions. The relevant portions of Chapter 802, House Joint

Resolution 3, Senate Bill 1298, Chapter 970, and Chapter 1078 are included in Appendix A.

The Legislative Research Commission grouped this study in its Taxation area under the direction of Representative John William Hurley. The Committee was chaired by Senator Dennis J. Winner and Representative Daniel T. Lilley. The full membership of the Committee and the staff assigned to the Committee are listed in Appendix B of this report.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Revenue Laws Study Committee met four times before the 1990 Session. The Committee recommended nine bills in its interim report to the 1990 Session of the 1989 General Assembly. Eight of these recommendations were enacted in 1990, although some were modified before enactment. Appendix C lists the recommendations and the action taken on them during the 1990 Session.

The Committee met four times after the 1990 Session. The Committee devoted much of its time to fulfilling its mandate to study budget restructuring and legislative session length, sales and use tax on mail order sales, and inheritance tax exemptions. It also studied whether to renew its recommendations of earlier proposals that had not been enacted: Highway Trust Fund changes and a merchant's discount for collecting and remitting sales taxes when due. The Committee investigated the status and potential impact of pending lawsuits against the State and developed a number of proposals designed to simplify business taxes for taxpayers and tax administrators alike. The Committee determined that the additional issues referred to it by the Legislative Research Commission after the 1990 Session did not leave it time for a thorough investigation of additional local revenue sources. A list of speakers that appeared before the Study Committee and the topics they addressed is provided in Appendix D.

-----Budget Restructuring and Legislative Session Length

The Committee spent a large part of its third meeting studying whether to recommend restructuring the State's budget process and limiting the length of legislative sessions. The Committee heard from Senator William D. Goldston, Jr. and Representative J. Arthur Pope, both of whom had introduced legislation on this topic during the 1990 Session. The bills, Senate Bill 1388 and House Bill 2293, provided that the amount budgeted for recurring expenditures each fiscal year would be the amount actually received during the prior calendar year. In addition to Senator Goldston and Representative Pope, the Committee heard from State Treasurer Harlan Boyles and from the Office of State Budget and Management, the State Controller's Office, and the Fiscal Research Division.

Proponents of Senator Goldston and Representative Pope's proposal pointed out that it would prevent shortfalls that occur when collections received during the fiscal

year are less than the amount estimated. Because revenues always grow from one year to the next, unless there is a depression, the revenue available would not fall short of the amount budgeted. Proponents stated that using the prior calendar year's receipts as the amount available for expenditure on recurring items would provide a definite figure to be used by the Governor and the General Assembly; this figure would be available by late January, allowing the General Assembly to proceed with the budget process earlier and more quickly.

A number of concerns about the proposal were raised during the Committee's deliberations. First, the proposal would restrict significantly the amount available for expenditure at a time when the State already faces a shortfall of \$650 to 800 million for the upcoming fiscal year. Even a transition period to phase in the new procedure could lead to severe restrictions that would force substantial spending reductions, tax increases, or both. In addition, some members were concerned that under the plan, each year's reversions would be too large and should not be used only for the following year's capital expenditures or for rebates to taxpayers. The Committee debated a possible compromise that would increase the prior year's receipts by a small percentage to arrive at the amount to budget for recurring appropriations.

The Committee determined finally that it was not able to resolve all of the competing considerations surrounding such a far-reaching change in the State's budget process. The Committee did agree, however, that there is a need to reform the State's budget process in a way that would provide more discipline in developing a budget and prevent the crises that occur when revenues fall short of budgeted expenditures. The Committee decided not to adopt proposed legislation on this topic but instead to endorse the following concepts: (i) the amount budgeted annually for recurring expenditures should be based on the prior calendar year's receipts and (ii) the legislative session would be shortened by adopting this approach to the budget process. In addition, the Committee agreed that its co-chairs would write to the chair of the Economic Future Study Commission, an independent legislative study commission, and urge that commission to consider this issue in developing proposed legislation to recommend to the 1991 General Assembly.

-----Sales and Use Tax on Direct Market Sales

The Revenue Laws Study Committee also studied the sales and use tax on direct market sales. Effective January 1, 1989, the General Assembly enacted legislation that expanded the circumstances under which North Carolina may require an out-of-State retailer to collect the State use tax on sales to residents of North Carolina. The act

states that a retailer must collect the tax if the retailer purposefully or systematically exploits the North Carolina market by mail, telephone, or other media. Formerly, an out-of-State retailer was not required to collect the tax unless it had a physical presence in North Carolina, either directly or through agents. The Committee investigated whether this law violates the United States Constitution. The Committee learned that the law governing collection of sales and use taxes on direct market sales is uncertain at this time because of changes in constitutional jurisprudence as well as developments in the technology used to conduct direct market businesses. Experts disagree on the extent to which a state can require retailers to collect the tax on direct market sales into the state. Until the question is decided by the United States Supreme Court or federal legislation, states and marketers will not be sure of the scope of constitutional restrictions in this area.

The Committee considered legislation from other states governing sales tax on direct market sales. It learned that 35 of the 45 states that have a sales and use tax have enacted laws, similar to that in North Carolina, expanding the scope of their tax to direct market sales by out-of-state retailers. A number of these states are actively pursuing test cases, so it is expected that the United States Supreme Court will rule on the constitutionality of this type of statute within the next few years. In addition to this type of law, many states, including North Carolina, have entered multi-state compacts to share information on direct market retailers and seek voluntary collection of the tax by these retailers.

Finally, the Committee reviewed North Carolina's efforts to collect the tax. It learned that while the Department of Revenue had contacted out-of-State retailers about the new law, it had not pursued the retailers through audits or assessments. The proceeds collected under the new law had originally been segregated into separate budget accounts but in 1990 the General Assembly eliminated the separate accounts and provided that the proceeds are to be distributed in the same way as other sales and use tax proceeds. It is estimated that if all out-of-State retailers complied with North Carolina's law, there would be an annual revenue gain to the State of \$50 million.

The Study Committee decided not to recommend further substantive changes at this time relating to collection of sales and use taxes by direct market retailers. The Committee identified a technical change to the statute, to be included with its other technical proposals, but postponed further action until the constitutional issue has been resolved.

-----Other Issues

The Committee investigated numerous other issues over the course of its study. As instructed by the Legislative Research Commission, it reviewed the continuing need for existing inheritance tax exemptions; Legislative Proposal 7 of this report reflects the Committee's recommendations on this issue. The Study Committee revised and renewed its earlier recommendations relating to the Highway Trust Fund and the merchant's discount for collecting sales and use taxes; these recommendations are reflected in Legislative Proposals 1, 2, 3, 4, and 18 of this report.

The Committee adopted a number of recommendations to simplify tax administration and compliance for businesses: Proposal 13 affects the franchise tax; Proposal 14 affects the soft drink tax; Proposals 15, 16, and 17 affect fuel taxes; Proposals 19 and 21 affect privilege license taxes; and Proposal 22 affects sales and use taxes. The Committee adopted Legislative Proposals 5, 11, 12, 20, and 23 to clarify statutory language and remove unintended gaps in the tax statutes. The Committee also recommended extending certain individual income tax benefits to out-of-State residents on a proportional basis; these recommendations are found in Legislative Proposals 9 and 10. Finally, the Committee addressed numerous technical changes that need to be made to the revenue laws. Legislative Proposal 24 contains the Committee's recommendations for technical changes.

The Committee expresses its appreciation for the assistance of Ms. Betsy Y. Justus, Secretary of Revenue, Mr. Myron Banks, Deputy Secretary of Revenue, the staff of the Department of Revenue, and the staff of the Division of Motor Vehicles. The Committee's task is made easier by the informed comments and suggestions of these tax administrators.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee recommends the following legislation to the 1991 General Assembly. The Committee's legislative proposals consist of twenty-four bills and one resolution. The proposals cover a broad range of topics, including revisions to the new Highway Use Tax that applies when a title is issued for a motor vehicle; repeal of inheritance tax exemptions; indemnification of tax officials for collecting a tax that is found to be unconstitutional; simplification and clarification of existing taxes; and technical amendments to the revenue laws. Each proposal is followed by an explanation. Each proposed bill that will have an impact on State revenues is followed by a fiscal note indicating the anticipated revenue gain or loss resulting from the proposal.

The Revenue Laws Study Committee also recommends that the amount budgeted annually by the State for recurring expenditures should be based on the prior calendar year's receipts. The Committee did not adopt specific legislation outlining this proposal but instead recommends that legislation be developed by the Economic Future Study Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

PROPOSAL 1 (91-LJX-3)

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Uniform Leasing Rate/ Fix Sales Tax Gaps. (Public)

Sponsors: Lilley, Abernethy, Brawley, Hasty

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REINSTATE SALES TAX ON MOPEDS, TOW DOLLIES, AND CERTAIN
VEHICLE BODIES AND TO ESTABLISH A UNIFORM LONG-TERM LEASING
RATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(8b) reads as rewritten:

"(8b) 'Motor vehicle' means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is propelled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment as defined in G.S. 20-4.01, any vehicle designed primarily for use in work off the highway, or a manufactured home. a vehicle that is designed primarily for use upon the highways and is either self-propelled

or propelled by a self-propelled vehicle, but does not include:

- a. A moped as defined in G.S. 20-4.01(27)(d1).
- b. Special mobile equipment as defined in G.S. 20-4.01(44).
- c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
- d. A farm tractor or other implement of husbandry.
- e. A manufactured home.
- f. Road construction or road maintenance machinery or equipment."

Sec. 2. G.S. 105-164.13(32) reads as rewritten:

"(32) Sales of motor vehicles, the ~~separate sales sale~~ of a motor vehicle body and a motor vehicle chassis when the body is to be mounted on the chassis, a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis. ~~of the sale.~~"

Sec. 3. G.S. 105-164.3(7a) reads as rewritten:

"(7a) 'Lease or rental' means ~~the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration without transfer of the title of such property.~~ a transfer, for consideration, of the use but not the ownership of property to another for a period of time."

Sec. 4. G.S. 105-187.1 reads as rewritten:

"§ 105-187.1. Definitions.

The following definitions and the definitions in G.S. 105-164.3 apply to this Article:

- (1) 'Commissioner' means the Commissioner of Motor Vehicles.
- (2) 'Division' means the Division of Motor Vehicles, Department of Transportation.

(3) 'Long-term lease or rental' means a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.

(4) 'Short-term lease or rental' means a lease or rental that is not a long-term lease or rental."

Sec. 5. G.S. 105-187.5(b) reads as rewritten:

"(b) Rate. The tax rate on the gross receipts ~~of from~~ the short-term lease or rental of a motor vehicle is eight percent (8%), unless the vehicle is leased or rented to the same person for a period of more than 90 continuous days. In that circumstance, the tax is eight percent (8%) for the first 90 days the vehicle is leased or rented to the same person and is three percent (3%) for the remainder of the period during which the vehicle is leased or rented to that person. (8%) and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent (3%). The maximum tax in G.S. 105-187.3(a) applies to ~~the a continuous lease or rental of a motor vehicle to the same person. when the vehicle is leased or rented to the same person for more than 90 continuous days. Tax paid by a person from the first day of a continuous lease or rental period applies toward the maximum tax."~~

Sec. 6. This act becomes effective July 1, 1991.

Explanation of Proposal 1

-----Background

The 1989 General Assembly established a \$9.1 billion highway program, created the North Carolina Highway Trust Fund to provide a separate source of funds for the program, and raised various taxes and fees to provide revenue for the Trust Fund. As part of the tax and fee increases, the General Assembly increased the motor fuel tax, repealed the 2%, \$300 maximum sales tax on motor vehicles and replaced that tax with a 3%, \$1000 maximum "highway use tax," increased the fee for issuing a certificate of title from \$5.00 to \$35.00, and increased related motor vehicle title and registration fees from varying amounts to \$10.00.

As part of its charge to study the impact of tax changes made in the 1989 Session, the Revenue Laws Study Committee considered the changes made by the Trust Fund legislation and the problems and concerns voiced about these changes by legislators, taxpayers, State departments, and local governmental units. Prior to the 1990 legislative session, the Committee identified several areas in need of technical amendment as well as several areas that need change to make the highway use tax fair to taxpayers and easier to administer. The Committee's recommendations to the 1990 Session were embodied in Senate Bill 1360, which failed to pass.

After the 1990 legislative session, the Committee reviewed its highway use tax proposals included in Senate Bill 1360 and decided to recommend the proposals with a few changes to the 1991 General Assembly. The Committee decided to separate its recommendations into several bills, however, so that lack of support for one of the recommendations would not prevent the passage of the rest of the recommendations.

Legislative Proposals 1 through 4 contain the Committee's recommendations concerning the highway use tax. For the most part, the recommendations are identical to the ones made to the 1990 legislative session.

-----Summary

Proposal 1 combines the two highway use tax recommendations of the Committee that affect the General Fund. It reinstates sales tax on several items that were previously subject to sales tax but are not currently taxed under either the sales tax or the highway use tax and it eliminates the two-tiered long term leasing rate and replaces

that rate with a flat rate. The items made taxable under the sales tax at the State rate of 3% and the local rate of 2% are mopeds, tow dollies, and certain vehicle bodies. The rate change on long-term leases eliminates the 90-day 8% rate so that a flat 3% rate applies for the term of the lease and defines a long-term lease to be a lease of at least one year. The changes are to become effective July 1, 1991.

-----Mopeds and Tow Dollies (Section 1)

The Highway Trust Fund legislation exempted motor vehicles from sales tax and imposed a titling tax, called a "highway use tax," on motor vehicles effective October 1, 1989. Mopeds and tow dollies are included in the sales tax definition of motor vehicle and are therefore exempt from sales tax. A moped is a motor vehicle that cannot go faster than 20 miles an hour and has a motor that does not exceed 50 cubic centimeters. A tow dolly is either an axle with a fifth wheel that is used to link two semi-trailers together behind a truck tractor or a device used to tow disabled vehicles that weigh less than 5,000 pounds.

As motor vehicles, mopeds and tow dollies are currently exempt from sales tax and are theoretically subject to the highway use tax. The highway use tax, however, is payable when a certificate of title is issued for a motor vehicle rather than when a motor vehicle is purchased. Mopeds and tow dollies are not required to be titled and therefore escape taxation under the highway use tax.

The Revenue Laws Study Committee concluded that the exemption of mopeds and tow dollies from sales tax when the items are not subject to the highway use tax is an unintended result of the Trust Fund legislation and that mopeds and tow dollies should either be subject to sales tax or be required to be titled and taxed under the highway use tax. Before October 1, 1989, mopeds and tow dollies were subject to sales tax at the rate of 2%, with a \$300 cap.

The Committee decided that it was better to reinstate sales tax on mopeds and tow dollies than to require them to be titled. Accordingly, Section 1 imposes sales tax on mopeds and tow dollies at the general State rate of 3% and the local rate of 2% for a combined rate of 5%. The Committee found that mopeds are more like bicycles than cars and trucks and should therefore be subject to the same sales tax rate as bicycles, which is 5%. The Committee further found that a tow dolly is a kind of motor vehicle part and accessory and should therefore be taxed at the same sales tax rate as other motor vehicle parts and accessories, which is 5%.

Like other sales tax revenue, the 3% State sales tax revenue from mopeds and tow dollies will be placed in the General Fund. The local 2% sales tax revenue will be returned to local units of government.

-----Motor Vehicle Bodies (Section 2)

Under the sales tax law in effect until October 1, 1989, a motor vehicle body was subject to sales tax at the rate of 2% with a \$300 cap. The 2%, \$300 rate was the rate that applied to a motor vehicle. If the body was to be mounted on a new chassis, the separate sales of the body and the chassis were considered a single sale of a motor vehicle for purposes of applying the 2%, \$300 maximum sales tax.

The Trust Fund legislation exempted motor vehicle bodies as well as motor vehicles from sales tax. The legislation exempted motor vehicle bodies under the assumption that highway use tax would be collected when a certificate of title is issued for the motor vehicle produced by mounting a motor vehicle body on a chassis.

The Revenue Laws Study Committee found that this assumption is mistaken when a motor vehicle body is installed on a chassis that has already been titled. Frequently, for example, a truck body is damaged and the truck owner has a new body installed on the truck. Because no new certificate of title is required in this circumstance, no highway use tax is due. The truck body, however, has escaped taxation under both the sales tax and the highway use tax because of the new specific exemption for motor vehicle bodies in G.S. 105-164.13(32). The Committee therefore recommends that motor vehicle bodies that are installed on titled chassis be subject to sales tax at the general State rate of 3% and the local rate of 2%, for a combined rate of 5%. The Committee decided that a motor vehicle body is a kind of motor vehicle part and accessory and should be taxed at the same rate as other motor vehicle parts and accessories, which is 5%.

-----Uniform Long-Term Leasing Rate (Sections 3, 4, and 5)

As part of the repeal of the sales tax on motor vehicles, the Trust Fund legislation repealed the 2%, \$300 maximum tax on the gross receipts from the lease or rental of a motor vehicle. In its place, the legislation created an optional gross receipts tax that lessors and renters of motor vehicles can elect to pay instead of paying the 3%, \$1,000 maximum highway use tax.

The optional tax is 8% of gross receipts for the first 90 days of a lease or rental to the same person and 3% of gross receipts after that. A lease or rental that extends for

more than 90 days is therefore subject to two different rates: 8% for the first 90 days and 3% after that. Tax collected at the 8% rate, however, applies towards the \$1,000 maximum for a lease or rental to the same person. Revenue from the 8% gross receipts tax is credited to the General Fund and revenue from the 3% gross receipts tax is credited to the Trust Fund.

The rationale of establishing different rates for rentals and leases of different lengths of time is that a long-term lease is similar to the purchase of a vehicle and should therefore be taxed at the same rate as an actual purchase of a vehicle. A vehicle purchased by someone who is not going to lease or rent the vehicle is subject to the 3%, \$1,000 maximum highway use tax.

The Revenue Laws Study Committee heard numerous complaints about the two-tiered tax rate on long-term leases and rentals from representatives of the long-term leasing industry. The representatives explained that the two-tiered rate was costly to administer and was forcing lessors to pay the highway use tax rather than exercise the option of paying on gross receipts. The Revenue Laws Study Committee determined that the concerns of the leasing industry were valid and that a 3% uniform long-term leasing rate could be established. To offset any reduction in revenue from decreasing the rental rate for the first 90 days of a long-term lease from 8% to 3%, the Committee recommends that the 8% rate apply to all leases or rentals for less than a year and that the 3% rate apply to all leases or rentals made under a contract to lease or rent a motor vehicle for at least one year.

Sections 3, 4, and 5 of Proposal 1 implement this recommendation. Section 3 amends the definition of lease or rental so the definition can be applied without redundancy when referring to a long-term lease or rental and a short-term lease or rental. Section 4 adds definitions of "long-term lease or rental" and "short-term lease or rental." Section 5 rewrites the statute that sets out the alternate gross receipts tax to set the rate at 8% for a short-term lease or rental and 3% for a long-term lease or rental.

Under the proposal, a long-term lease or rental of a motor vehicle is a lease or rental made under a written contract to lease or rent a vehicle to the same person for at least one year. A short-term lease or rental is any other lease or rental. Thus, if a vehicle is leased under a written three-year lease, the tax rate on the gross receipts for the entire period of the lease is 3%. Similarly, if a vehicle is leased under a written two-year lease and the lease is terminated before the end of the first year of the lease, the tax rate for the entire period the vehicle was actually leased is nevertheless 3%. If

a vehicle is rented on a month-to-month basis, for a fixed period of less than 1 year, or on the basis of an oral agreement, the tax rate on the gross receipts for the entire period of the rental is 8%.

Proposal 1

Explanation

This proposal deals with the taxation of the sale of certain motor vehicles that currently escape both sales taxes and highway use taxes. Mopeds and tow dollies currently do not pay the highway use tax because they are exempt from registration and title requirements, yet they are also exempt from state and local sales taxes. Motor vehicle bodies were exempt from sales taxes by House Bill 399 (Highway Trust Fund) of the 1989 General Assembly, but escape taxation under the state's title tax when replacement vehicle bodies are installed on a vehicle that is already titled.

Under this proposal, all three classes of vehicles would be subject to state and local sales taxes at the time of purchase.

Additionally, this proposal establishes a uniform long-term gross receipts tax rate of 3% on leases which are at least 365 days in length of term. This replaces the current two-tiered rate of 8% on the first ninety days of a rental or lease contract and 3% thereafter.

Effective Date

July 1, 1991

Fiscal Effect

For FY 1991-92, the revenue increases generated from the levy of sales tax on mopeds, tow dollies, and motor vehicle bodies would be slightly greater than the decrease in revenues from lowering the gross receipts tax rate from 8% to 3% for long-term leases. This proposal is expected to generate at a maximum \$50,000 in the General Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

PROPOSAL 2 (91-LJ-4)

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Highway Trust Fund Technical Changes. (Public)

Sponsors: Lilley, Abernethy, Brawley, Hasty

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ADMINISTRATION OF THE HIGHWAY TRUST FUND
AND TO MAKE TECHNICAL CHANGES TO THE LAWS AFFECTED BY THE
HIGHWAY TRUST FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-187.4(b) reads as rewritten:

"(b) Sale by Retailer. When a certificate of title for a motor vehicle is issued because of a sale of the motor vehicle by a retailer, the applicant for the certificate of title must attach a copy of the bill of sale for the motor vehicle to the application. A retailer who sells a motor vehicle may collect from the purchaser of the vehicle the tax payable upon the issuance of a certificate of title for the vehicle, apply for a certificate of title on behalf of the purchaser, and remit the tax due on behalf of the purchaser. If a check submitted by a retailer in payment of taxes collected under this section is not honored by the financial institution upon which it is drawn because the retailer's account did not have sufficient funds to pay the check or the retailer did not have an account at the institution, the Division may suspend or revoke the license issued to the retailer under Article 12 of Chapter 20 of the General Statutes."

1 Sec. 2. G.S. 20-294 reads as rewritten:

2 "\$ 20-294. Grounds for denying, suspending or revoking licenses.

3 A license may be denied, suspended or revoked on any one or
4 more of the following grounds:

5 (1) Material misstatement in application for license.

6 (2) Willful and intentional failure to comply with any
7 provision of this Article or Article 15 or the
8 willful and intentional violation of G.S. 20-52.1,
9 20-75, 20-79, 20-82, 20-108, 20-109 or rescission
10 and cancellation of dealer's license and dealer's
11 plates under G.S. 20-110(e) or 20-110(f) or any
12 lawful rule or regulation promulgated by the
13 Division under this Article.

14 (3) Being a motor vehicle dealer, failure to have an
15 established place of business as defined in this
16 Article.

17 (4) Willfully defrauding any retail buyer, to the
18 buyer's damage, or any other person in the conduct
19 of the licensee's business.

20 (5) Employment of fraudulent devices, methods or
21 practices in connection with compliance with the
22 requirements under the laws of this State with
23 respect to the retaking of motor vehicles under
24 retail installment contracts and the redemption and
25 resale of such motor vehicles.

26 (6) Having used unfair methods of competition or unfair
27 deceptive acts or practices.

28 (7) Knowingly advertising by any means, any assertion,
29 representation or statement of fact which is
30 untrue, misleading or deceptive in any particular
31 relating to the conduct of the business licensed or
32 for which a license is sought.

33 (8) Knowingly advertising a used motor vehicle for sale
34 as a new motor vehicle.

35 (9) Conviction of an offense set forth under G.S.
36 20-106, 20-106.1, 20-107, 20-112 while holding such
37 a license or within five years next preceding the
38 date of filing the application; or conviction of a
39 felony involving moral turpitude under the laws of
40 this State, any other state, territory or the
41 District of Columbia or of the United States.

42 (10) Submitting a bad check to the Division of Motor
43 Vehicles in payment of highway use taxes collected
44 by the licensee."

Sec. 3. G.S. 105-187.5(d) reads as rewritten:

"(d) ~~Reporting Administration.~~ The Division shall notify the Secretary of Revenue of a retailer who makes the election under this section. A retailer who makes this election shall report and remit to the Secretary the tax on the gross receipts of the lease or rental of the motor vehicle ~~as if the gross receipts were taxable under G.S. 105-164.4(a)(2).~~ The Secretary shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section. In addition, the Division may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this section. When the Secretary conducts an audit at the request of the Division, the Division shall reimburse the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this section, the Secretary may audit any sales of motor vehicles made by the retailer."

Sec. 4. G.S. 105-187.6 reads as rewritten:

"§ 105-187.6. Exemptions from highway use tax.

(a) Full Exemptions. -- The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

- (1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.
- (2) To either a manufacturer, as defined in G.S. 20-285, or a motor vehicle retailer for the purpose of ~~resale.~~ resale other than lease or rental.

(b) Partial Exemptions. -- Only the minimum tax imposed by this Article applies when a certificate of title is issued as a the result of a transfer of a motor vehicle:

- (1) By a gift between a husband and wife or a parent and child.
- (2) By will or intestacy.
- (3) By a distribution of marital property as a result of a divorce.
- (4) To a secured party who has filed a perfected security interest in the motor vehicle with the Department of the Secretary of State. vehicle.
- (5) To a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue

Code, or to a corporation by merger or consolidation in accordance with G.S. 55-110.

(6) To the same owner to reflect a change in the owner's name.

(c) Out-of-state Vehicles. -- A maximum tax of one hundred dollars (\$100.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in another state for at least 90 days."

Sec. 5. G.S. 105-436 is repealed.

Sec. 6. Section 4 of Chapter 753 of the 1989 Session Laws reads as rewritten:

"Sec. 4. ~~These refunds~~ Refunds for taxable periods ending before October 1, 1989, shall be drawn from the Highway Fund. Refunds for taxable periods ending after September 30, 1989, shall be drawn from the Highway Fund and the Highway Trust Fund in the same percentage amounts that refunds are drawn from these Funds under G.S. 105-445."

Sec. 7. G.S. 20-57(b) reads as rewritten:

"(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for the owner's signature, the registration number assigned to the vehicle, and such a description of the vehicle as determined by the Commissioner, provided that if there are more than two owners the Division may show only two owners on the registration card and indicate that additional owners exist by placing after the names listed 'et al.' ~~Upon application to the Division, the registered owner may acquire additional copies of the registration card at a fee of three dollars (\$3.00) each. An owner may obtain a copy of a registration card issued in the owner's name by applying to the Division for a copy and paying the fee set in G.S. 20-85.~~"

Sec. 8. G.S. 20-85(a) reads as rewritten:

"(a) ~~Except as provided in G.S. 20-68, the following fees concerning a certificate of title for a motor vehicle and registration of a motor vehicle shall be paid to the Division. The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.~~

(1) Each application for certificate of title \$35.00

(2) Each application for duplicate
or corrected certificate of title 10.00

(3) Each application of reposessor for

- | | | |
|----|---|---------|
| 1 | certificate of title | 10.00 |
| 2 | (4) Each transfer of registration | 10.00 |
| 3 | (5) Each set of replacement registration | |
| 4 | plates | 10.00 |
| 5 | (6) Each application for duplicate registration | |
| 6 | certificate <u>card</u> | 10.00 |
| 7 | (7) Each application for recording supplementary | |
| 8 | lien | 10.00 |
| 9 | (8) Each application for removing a lien from a | |
| 10 | certificate of title | 10.00 |
| 11 | (9) Each application for certificate of title | |
| 12 | for a motor vehicle transferred to a | |
| 13 | manufacturer, as defined in G.S. 20-285, | |
| 14 | or a motor vehicle retailer for the purpose | |
| 15 | of resale | 10.00." |
| 16 | Sec. 9. G.S. 20-85.1(c) reads as rewritten: | |
| 17 | "(c) All funds collected under this section shall be deposited | |
| 18 | in <u>credited</u> to the Highway Fund." | |
| 19 | Sec. 10. G.S. 136-176(a) reads as rewritten: | |
| 20 | "(a) A special account, designated the North Carolina Highway | |
| 21 | Trust Fund, is created within the State treasury. The Trust Fund | |
| 22 | consists of the following revenue: | |
| 23 | (1) Motor fuel, special fuel, and road tax revenue | |
| 24 | deposited in the Fund under G.S. 105-445, | |
| 25 | 105-449.16, and 105-449.43, respectively. | |
| 26 | (2) Motor vehicle use tax deposited in the Fund under | |
| 27 | G.S. 105-173 , <u>105-187.9</u> . | |
| 28 | (3) Revenue from the certificate of title fee and other | |
| 29 | fees payable under G.S. 20-85. | |
| 30 | (4) Revenue available from the retirement of refunding | |
| 31 | bonds issued to repay highway construction bonds | |
| 32 | and deposited in the Fund under G.S. 136-183. | |
| 33 | (5) Interest and income earned by the Fund." | |
| 34 | Sec. 11. This act is effective upon ratification. | |

Explanation of Proposal 2

-----Background

Proposal 2 is one of four proposals made by the Revenue Laws Study Committee on the subject of the highway use tax. The highway use tax is the 3%, \$1,000 maximum motor vehicle titling tax enacted in 1989 to fund the Highway Trust Fund. The tax is explained in Proposal 1. The other three proposals concerning the highway use tax are Proposals 1, 3, and 4. This proposal is identical to the recommendation on this issue made by the Revenue Laws Study Committee to the 1990 legislative session.

-----Summary

Proposal 2 combines the highway use tax recommendations of the Committee that have no fiscal effect. The proposal makes two administrative changes and numerous technical changes. One of the administrative changes makes submission of bad checks in payment of the highway use tax grounds for suspending or revoking a dealer's license. The other administrative change gives the Department of Revenue the authority to audit motor vehicle lessors and renters who elect to pay the optional gross receipts tax rather than pay the highway use tax at the time a motor vehicle is purchased. The proposal is to become effective upon ratification.

-----Bad Checks (Sections 1 and 2)

The highway use tax imposed by the Trust Fund legislation must be paid before a certificate of title is issued for a motor vehicle. Because many motor vehicle dealers apply for a certificate of title for vehicles bought from them, the legislation allows a dealer to collect the highway use tax payable on a motor vehicle and remit the tax to the Division of Motor Vehicles when the dealer applies for a title on behalf of the buyer of the motor vehicle. The Division of Motor Vehicles has received over \$15,000 in bad checks from dealers in payment of the highway use tax.

The Division asked the Committee to consider giving the Division a remedy for the submission of bad checks by dealers. Under current law, the Division can remove the registration plate from any vehicle for which a bad check was given in payment of the highway use tax. The Division noted that it does not seem fair to remove the plate

from a vehicle when the owner of the vehicle paid the tax to a dealer and the dealer submitted a bad check to the Division.

In response to this request, the Committee recommends that the Division of Motor Vehicles be given the authority to revoke or suspend a motor vehicle dealer's license if the dealer submits a bad check to the Division in payment of the highway use tax. Sections 1 and 2 of Proposal 2 implement this recommendation.

Section 1 inserts a sentence in the highway use tax statutes that alerts those who collect the tax of the power to suspend or revoke a dealer's license. Section 2 amends the statute that lists the grounds for adverse action on various licenses concerning the sale of motor vehicles to add submitting bad checks in payment of the highway use tax as a grounds for adverse action.

-----Audit (Section 3)

The gross receipts tax on motor vehicles is now an elective alternate to the highway use tax and is set out in the highway use tax statutes. The Division of Motor Vehicles collects the highway use tax, but the Department of Revenue collects the gross receipts tax. Under prior law, the gross receipts tax on motor vehicles was part of the sales tax law and was administered by the Department of Revenue.

Because the statutes that levy the gross receipts tax are now part of the statutes that are administered by the Division of Motor Vehicles rather than the Department of Revenue, the question arose of whether the Department of Revenue's audit authority extends to those who pay the gross receipts tax to the Department. To resolve this question, the Committee recommends that the Department of Revenue be given the same authority to audit those who pay the gross receipts tax that it has to audit those who remit sales and use taxes. The Committee further recommends that the Division of Motor Vehicles be given specific authority to request the Department of Revenue to conduct an audit of a person who pays the gross receipts tax. Section 3 of Proposal 1 implements this recommendation.

-----Technical Corrections (Sections 4 through 10)

The Committee identified several technical changes that need to be made as a result of the Trust Fund changes concerning taxes and fees. The changes do the following:

1. Make it clear that a motor vehicle sold for lease or rental is not exempt from the highway use tax under G.S. 105-187.6(a)(2). This clarification is

necessary because the sales tax definition of "sale," which applies to the titling tax, includes lease or rental.

2. Delete an inaccurate reference in G.S. 105-187.6(b)(4) to the filing of a security interest in a motor vehicle with the Secretary of State. Security interests in most motor vehicles are perfected by filing with the Division of Motor Vehicles.
3. Delete G.S. 105-436, which conflicts with G.S. 105-445. G.S. 105-436 states that gas tax revenue is to be credited to the Highway Fund, but G.S. 105-445 requires 75% of gas tax revenue to be credited to the Highway Fund and 25% to be credited to the Highway Trust Fund. The provisions in G.S. 105-436 on payment of the gas tax by distributors duplicate G.S. 105-434(b).
4. Allocate gas tax refunds made to the Cherokee Tribe between the Highway Fund and the Highway Trust Fund in accordance with the 75%/25% split for other refunds.
5. Delete unnecessary and inaccurate language in G.S. 20-57(b) concerning the fee imposed for issuing a copy of a registration card for a motor vehicle. G.S. 20-85 sets the fee at \$10.00.
6. Delete unnecessary and inaccurate language in G.S. 20-85 concerning an exception to the fee schedule set in that statute. G.S. 20-68 does not contain an exception to the fee schedule in 20-85 and has not since 1975.

Proposal 2

Explanation

This proposal makes technical changes to the administration of the revenue sources that make up the Highway Trust Fund as enacted by the 1989 Session of the General Assembly. The administrative changes that will improve the collection of Trust Fund revenues include:

1. Authorization for the Division of Motor Vehicles to suspend a motor vehicle dealer's license if that dealer issues a bad check in payment of the highway use tax
2. Clarification of the authority of the Department of Revenue to administer the alternate gross receipts tax on rental and leased vehicles in the same manner as the sales tax
3. Authorization for the Division of Motor Vehicles to request audits of retailers who pay the alternate gross receipts tax; the Department of Revenue will conduct the audits and will be reimbursed for expenses by the Division of Motor Vehicles
4. Clarification that motor fuel tax refunds for the Cherokee Indian Tribe authorized by the 1989 General Assembly be drawn proportionately from the Highway Fund and the Highway Trust Fund

Effective Date

Upon ratification

Fiscal Effect

None

RS:ja

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

PROPOSAL 3 (91-LJX-5)

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: October 1, 1989, Vehicle Inventory.

(Public)

Sponsors: Lilley, Abernethy, Brawley, Hasty

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW LESSORS AND RENTERS OF MOTOR VEHICLES TO ELECT TO
PAY HIGHWAY USE TAX ON MOTOR VEHICLES OWNED ON OCTOBER 1, 1989,
AND TO CLARIFY THAT THESE MOTOR VEHICLES ARE OTHERWISE SUBJECT
TO THE GROSS RECEIPTS TAX.

The General Assembly of North Carolina enacts:

Section 1. Article 5A of Chapter 105 of the General
Statutes is amended by adding a new section to read:

"§ 105-187.11. Transition from sales tax to highway use tax for
lessors and renters of motor vehicles.

A tax at the rate set in G.S. 105-187.5(b) is levied on the
gross receipts derived by a retailer from the lease or rental of
a motor vehicle owned by the retailer before October 1, 1989, and
leased or rented on or after that date. A retailer subject to
this tax may elect to pay highway use tax at the rate set in G.S.
105-187.3(a) on a motor vehicle owned by the retailer before
October 1, 1989, and leased or rented on or after that date. The
retail value of a motor vehicle for which a retailer makes an
election under this section is the value of the motor vehicle
that would apply under G.S. 105-187.3(b) if the retailer received
the vehicle because of a reason other than the sale of the motor
vehicle on the date the retailer makes the election.

1 To make the election allowed by this section, a retailer shall
2 complete a form provided by the Division, pay the tax due, and
3 pay the fee set in G.S. 20-85(a)(9). A retailer who makes this
4 election may not receive credit for any tax paid on the motor
5 vehicle under Article 5 of this Chapter or for any tax on gross
6 receipts paid under this Article. The Division shall notify the
7 Secretary of Revenue of a retailer who makes an election under
8 this section."

9 Sec. 2. This act is effective upon ratification.

Explanation of Proposal 3

-----Background

Proposal 3 is one of four proposals made by the Revenue Laws Study Committee on the subject of the highway use tax. The highway use tax is the 3%, \$1,000 maximum motor vehicle titling tax enacted in 1989 to fund the Highway Trust Fund. The tax is explained in Proposal 1. The other three proposals concerning the highway use tax are Proposals 1, 2, and 4. This proposal is identical to the recommendation made on this issue by the Revenue Laws Study Committee to the 1990 legislative session.

-----Proposal

This proposal gives lessors and renters of motor vehicles the option of paying the highway use tax rather than the alternate gross receipts tax on motor vehicles owned on October 1, 1989, and clarifies the tax status of these motor vehicles. The proposal is to become effective upon ratification.

The Highway Trust Fund legislation repealed the sales tax on motor vehicles effective October 1, 1989, imposed a titling tax on motor vehicles, and gave lessors and renters of motor vehicles an option of either paying the new 3% titling tax when purchasing a vehicle for lease or rental or waiving payment of the titling tax and collecting a tax on the lease or rental receipts. The law did not give lessors and renters an option of paying titling tax on vehicles owned on the effective date of the change.

Because the highway use tax applies to vehicles titled on or after October 1, 1989, it is not entirely clear what tax applies to leases made or renewed on or after October 1, 1989, that involve a motor vehicle owned as of October 1. The former law does not apply and, arguably, the new highway use tax law with its alternate gross receipts tax has not been triggered because no vehicle has been titled. Consistent with the intent of the legislation, those motor vehicles owned on October 1, 1989, that are leased on or after that date are subjected to the alternate gross receipts tax and pay tax at the rate of 8% for the first 90 days of the lease and 3% after that.

Representatives of the leasing and rental industry brought this subject to the attention of the Revenue Laws Study Committee and pointed out that the failure to extend the same option to inventory owned on October 1 creates bookkeeping problems

for lessors and renters and prevents them from having a uniform policy concerning the tax. In response to this, the Committee developed this proposal.

The proposal allows lessors and renters of motor vehicles to elect to pay the new 3% highway use tax on motor vehicles owned by them on October 1, 1989, the effective date of the tax change. In doing so, it gives them the same option on their existing inventory that they have on vehicles purchased since October 1, 1989.

A lessor or renter who elects to pay the titling tax under the proposal will pay tax based on the retail value of the vehicle. The retail value for these motor vehicles is the wholesale book value of the vehicle as determined in accordance with schedules of value adopted by the Commissioner of Motor Vehicles. The retail value may be less than or greater than the lessor's or renter's book value of the vehicle, which is based on cost less depreciation.

Fiscal Report
Fiscal Research Division

Proposal 3

Explanation

This proposal allows vehicle rental and leasing companies to elect to pay the 3% highway use tax instead of the gross receipts tax on vehicles that were in service prior to October 1, 1989. Under the provisions of House Bill 399 (Highway Trust Fund), the election to pay the 3% title tax or the alternate gross receipts tax can only occur at the time of a transfer of title. Motor vehicles already owned by rental and leasing companies were therefore denied the option to pay the 3% title tax.

Effective Date

Upon ratification

Fiscal Effect

At this time, the fiscal estimate for FY 1991-92 is a one-time revenue increase to the Highway Trust Fund in the range of \$1 million to \$1.5 million.

RS:ja

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 4 (91-LJ-6)

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Highway Use Tax Reductions.

(Public)

Sponsors: Winner, Kincaid, Staton

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO LOWER THE MINIMUM HIGHWAY USE TAX AND TO EXEMPT CERTAIN
3 TRANSFERS OF VEHICLES FROM THE TAX.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-187.3(a) reads as rewritten:
6 "(a) Amount. The rate of the use tax imposed by this Article
7 is three percent (3%) of the retail value of a motor vehicle for
8 which a certificate of title is issued. The tax is payable as
9 provided in G.S. 105-187.4. The tax may not be less than ~~forty~~
10 ~~dollars (\$40.00)~~ twenty dollars (\$20.00) for each motor vehicle
11 for which a certificate of title is issued, unless the issuance
12 of a title for the vehicle is exempt from tax under G.S.
13 105-187.6(a). The tax may not be more than one thousand dollars
14 (\$1,000) for each motor vehicle for which a certificate of title
15 is issued."
16 Sec. 2. G.S. 105-187.7 reads as rewritten:
17 "\$ 105-187.7. Credit for tax paid in another state.
18 A person who, within 90 days before applying for a certificate
19 of title for a motor vehicle on which the tax imposed by this
20 Article is due, has paid a sales tax, an excise tax, or a tax
21 substantially equivalent to the tax imposed by this Article on
22 the vehicle to a taxing jurisdiction outside this State is

1 entitled to a credit against the tax due under this Article for
2 the amount of tax paid to the other jurisdiction. The credit may
3 not reduce the person's liability under this Article below the
4 minimum ~~forty-dollar (\$40.00) tax, tax set in G.S. 105-187.3."~~

5 Sec. 3. G.S. 105-187.8 reads as rewritten:

6 "§ 105-187.8. Refund for return of purchased motor vehicle.

7 When a purchaser of a motor vehicle returns the motor vehicle
8 to the seller of the motor vehicle within 90 days after the
9 purchase and receives a vehicle replacement for the returned
10 vehicle or a refund of the price paid the seller, whether from
11 the seller or the manufacturer of the vehicle, the purchaser may
12 obtain a refund of the privilege tax paid on the certificate of
13 title issued for the returned motor vehicle; less the minimum tax
14 ~~of forty dollars (\$40.00), set in G.S. 105-187.3.~~

15 To obtain a refund, the purchaser must apply to the Division
16 for a refund within 30 days after receiving the replacement
17 vehicle or refund of the purchase price. The application must be
18 made on a form prescribed by the Commission and must be supported
19 by documentation from the seller of the returned vehicle."

20 Sec. 4. G.S. 105-187.6 reads as rewritten:

21 "§ 105-187.6. Exemptions from highway use tax.

22 (a) Full Exemptions. -- The tax imposed by this Article does
23 not apply when a certificate of title is issued as the result of
24 a transfer of a motor vehicle:

- 25 (1) To the insurer of the motor vehicle under G.S.
26 20-109.1 because the vehicle is a salvage vehicle.
- 27 (2) To either a manufacturer, as defined in G.S.
28 20-285, or a motor vehicle retailer for the purpose
29 of resale.
- 30 (3) To the same owner to reflect a change or correction
31 in the owner's name.
- 32 (4) To the Department of Human Resources to be equipped
33 by the Department for use by the handicapped and
34 then transferred to a handicapped person.
- 35 (5) To a local board of education for use in the driver
36 education program of a public school when the motor
37 vehicle is transferred:
 - 38 a. By a retailer and is to be transferred
39 back to the retailer within 180 days of
40 after the transfer to the local board.
 - 41 b. By a local board of education.
- 42 (6) By will or intestacy.
- 43 (7) By a gift between a husband and wife or a parent
44 and child.

1 (b) Partial Exemptions. -- Only the minimum tax imposed by
2 this Article applies when a certificate of title is issued as a
3 result of the transfer of a motor vehicle:

4 ~~(1) By a gift between a husband and wife or a parent~~
5 ~~and child.~~

6 ~~(2) By will or intestacy.~~

7 ~~(3)~~ (1) By a distribution of marital property as a
8 result of a divorce.

9 ~~(4)~~ (2) To a secured party who has filed a security
10 interest in the motor vehicle with the
11 Department of the Secretary of State.

12 ~~(5)~~ (3) To a partnership or corporation as an incident
13 to the formation of the partnership or
14 corporation and no gain or loss arises on the
15 transfer under section 351 or section 721 of
16 the Internal Revenue Code, or to a corporation
17 by merger or consolidation in accordance with
18 G.S. 55-110.

19 ~~(6) To the same owner to reflect a change in the~~
20 ~~owner's name.~~

21 (c) Out-of-state Vehicles. -- A maximum tax of one hundred
22 dollars (\$100.00) applies when a certificate of title is issued
23 for a motor vehicle that, at the time of applying for a
24 certificate of title, is and has been titled in another state for
25 at least 90 days."

26 Sec. 5. This act becomes effective July 1, 1991.

Explanation of Proposal 4

-----Background

Proposal 4 is one of four proposals made by the Revenue Laws Study Committee on the subject of the highway use tax. The highway use tax is the 3%, \$1,000 maximum motor vehicle titling tax enacted in 1989 to fund the Highway Trust Fund. The tax is explained in Proposal 1. The other three proposals concerning the highway use tax are Proposals 1, 2, and 3. This proposal is similar to the recommendation made on this issue by the Revenue Laws Study Committee to the 1990 legislative session.

-----Proposal

This proposal reduces the highway use tax in two ways. It lowers the minimum tax from \$40.00 to \$20.00 and it exempts certain transfers from the tax. The vehicles exempted from the tax are listed below. The proposal is to become effective July 1, 1991.

The highway use tax is 3% of the retail value of a motor vehicle but cannot be less than \$40.00 nor more than \$1,000. In addition to the \$40.00 minimum highway use tax, a titling fee of \$35.00 plus a registration plate fee of \$10.00 or \$20.00 must be paid when a certificate of title is issued for a newly-acquired passenger motor vehicle or trailer.

Members of the Revenue Laws Study Committee received correspondence from constituents who are concerned about the high minimum tax, particularly when it is applied to motor vehicles of low value. The Committee debated the issue and determined that the minimum tax is very regressive, particularly when coupled with the \$35.00 title fee and the \$10.00 or \$20.00 plate fee, and that it is not fair to collect the same amount of tax on a vehicle valued at \$1,300 as on a vehicle valued at \$250.00.

The Committee therefore recommends that the minimum tax be lowered from \$40.00 to \$20.00. The Committee debated eliminating the minimum tax so that all motor vehicles would be taxed under the highway use tax on the basis of value only. The Committee declined to recommend eliminating the minimum tax out of concern for the loss of Trust Fund revenue resulting from the recommendation.

Sections 1, 2; and 3 of Proposal 4 implement this recommendation. Section 1 lowers the minimum tax to \$20.00 and Sections 2 and 3 change references to the amount of the minimum tax. Under this recommendation, motor vehicles ranging in value up to \$690.00 are all subject to the same \$20.00 minimum tax. Above this value, the amount of tax increases because 3% of the value is more than \$20.00. The recommendation does not affect the \$35.00 title fee or the \$10.00 or \$20.00 plate fee.

The Revenue Laws Study Committee also heard numerous complaints from taxpayers about the imposition of the highway use tax on various transfers of motor vehicles. Taxpayers complained most about transfers that occur for a reason other than the sale of the vehicle. The most frequent complaint was lodged against transfers to the same owner because of a name change. The second most frequent complaint was about transfers to a beneficiary upon the death of the former owner.

Unlike the former sales tax on motor vehicles, which was payable only when a motor vehicle was sold, the highway use tax is payable every time a certificate of title is issued for a motor vehicle. A title is issued every time a motor vehicle is transferred to a new owner or the owner changes names, regardless whether any cash changes hands in the transfer.

In addition to complaints about the application of the tax to circumstances that do not involve a sale, the Committee heard concerns raised by the Department of Human Resources and the Department of Public Education about the tax imposed on vehicles purchased by each Department or by local governmental units. The Department of Human Resources voiced concern about the tax imposed on vans equipped for the handicapped, and the Department of Public Instruction voiced concern about the tax imposed on public school buses and vehicles used in driver education programs in the public schools.

In response to these complaints and concerns, the Committee recommends that the following motor vehicles be exempt from the highway use tax:

1. Vehicles for which a new title is issued because the owner changed names.
2. Vehicles transferred to the Department of Human Resources to be equipped for use by the handicapped and then transferred to a handicapped person.
3. Vehicles used in the driver education program of a public school.
4. Vehicles transferred as a result of the death of the former owner.
5. Vehicles transferred as result of a gift between a husband and wife or a parent and child.

Currently, the vehicles described in items 1, 4, and 5 are subject to only the minimum \$40.00 tax. The other vehicles are subject to tax at the rate of 3%, with a \$1,000 cap. Section 4 of the proposal implements this recommendation.

Proposal 4

Explanation

This proposal lowers the minimum highway use tax levied on every title transaction from \$40 to \$20, and it also exempts certain categories of title transfers from the highway use tax. The additional exemptions include:

1. Name changes, including those due to marriage or divorce
2. Vehicles transferred to the Department of Human Resources to be equipped for use by a handicapped person
3. Vehicles transferred to a local board of education for use in the driver education program
4. Vehicles transferred by will or intestacy
5. Gifts between husband and wife or parent and child

Effective Date

July 1, 1991

Fiscal Effect

The revenue loss to the Highway Trust Fund is estimated to be in the range of \$12 to 14 million each fiscal year beginning with FY 1991-92.

RS:ja

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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PROPOSAL 5 (91-LJX-7)

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Pay Scrap Tire Tax On All New Tires. (Public)

Sponsors: Lilley, Abernethy, Brawley, Hasty.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPLY THE TIRE TAX, USED TO PAY FOR THE DISPOSAL
OF SCRAP TIRES, TO NEW TIRES FOR ROAD CONSTRUCTION
EQUIPMENT AND OTHER NEW VEHICLE TIRES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is
amended by adding a new Article to read:

"ARTICLE 5B.

"Scrap Tire Disposal Tax.

"§ 105-187.15. Definitions.

The definitions in G.S. 105-164.3 apply to this Article, except
that the term 'sale' does not include lease or rental, and the
following definitions apply to this Article:

(1) Scrap tire. A tire that is no longer suitable for
its original, intended purpose because of wear,
damage, or defect.

(2) Tire. A continuous solid or pneumatic rubber
covering encircling a wheel.

"§ 105-187.16. Tax imposed.

A privilege tax is imposed on a tire retailer at the rate of
one percent (1%) of the sales price of each new tire sold at
retail by the retailer. A privilege tax is imposed on a tire

1 retailer and on a tire wholesale merchant at the rate of one
2 percent (1%) of the sales price of each new tire sold by the
3 retailer or wholesale merchant to a wholesale merchant or
4 retailer for placement on a vehicle offered for sale, lease, or
5 rental by the retailer or wholesale merchant. An excise tax is
6 imposed on a new tire purchased for storage, use, or consumption
7 in this State or for placement in this State on a vehicle offered
8 for sale, lease, or rental at the rate of one percent (1%) of the
9 cost price of the tire. These taxes are in addition to all other
10 taxes.

11 "§ 105-187.17. Administration.

12 The privilege tax this Article imposes on a tire retailer who
13 sells new tires at retail is an additional State sales tax and
14 the excise tax this Article imposes on the storage, use, or
15 consumption of a new tire in this State is an additional State
16 use tax. Except as otherwise provided in this Article, these
17 taxes shall be collected and administered in the same manner as
18 the State sales and use taxes imposed by Article 5 of this
19 Chapter. As under Article 5 of this Chapter, the additional
20 State sales tax paid when a new tire is sold is a credit against
21 the additional State use tax imposed on the storage, use, or
22 consumption of the same tire.

23 The privilege tax this Article imposes on a tire retailer and
24 on a tire wholesale merchant who sell new tires for placement in
25 this State on a vehicle offered for sale, lease, or rental is a
26 tax on the wholesale sale of the tires. This tax and the excise
27 tax this Article imposes on a new tire purchased for placement in
28 this State on a vehicle offered for sale, lease, or rental
29 shall, to the extent practical, be collected and administered as
30 if they were additional State sales and use taxes. The privilege
31 tax paid when a new tire is sold for placement on a vehicle
32 offered for sale, lease, or rental is a credit against the use
33 tax imposed on the purchase of the same tire for placement in
34 this State on a vehicle offered for sale, lease, or rental.

35 "§ 105-187.18. Exemptions.

36 The taxes imposed by this Article do not apply to:

- 37 (1) Aircraft tires.
- 38 (2) Bicycle tires and other tires for vehicles
39 propelled by human power.
- 40 (3) Recapped tires.

41 The exemptions in G.S. 105-164.13 and the refunds allowed in G.S.
42 105-164.14 do not apply to the taxes imposed by this Article.

43 "§ 105-187.19. Use of tax proceeds.

The Secretary shall distribute the taxes collected under this Article, less the cost of collecting the taxes, in accordance with this section. The Secretary shall retain the cost of collection as reimbursement to the Department of Revenue.

Each quarter, the Secretary shall credit ten percent (10%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall distribute ninety percent (90%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the Office of State Budget and Management. A county may use funds distributed to it under this section only as provided in G.S. 130A-309.54."

Sec. 2. G.S. 130A-309.53(7) reads as rewritten:

"(7) 'Tire' means a continuous solid or pneumatic rubber covering encircling that encircles the wheel of a motor vehicle as defined in G.S. 20-4.01(23), and is subject to the tax imposed by Article 5B of Chapter 105."

Sec. 3. G.S. 130A-309.54 reads as rewritten:

"§ 130A-309.54. Scrap tire disposal fee. Use of scrap tire tax proceeds.

(a) A fee is imposed on the privilege of selling or using new motor vehicle tires in this State. This fee is in addition to all other taxes and fees imposed.

(b) The definitions in G.S. 105-164.3 apply to G.S. 130A-309.55 and G.S. 130A-309.56, except the term "sale" does not include a lease or rental.

(c) The fees imposed by G.S. 130A-55 and G.S. 130A-56 shall be used by each Article 5B of Chapter 105 imposes a tax on new tires to provide funds for the disposal of scrap tires. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60.

(d) The fees imposed by G.S. 130A-55 and G.S. 130A-56 shall be administered in the same manner as the tax imposed by Article 5 of Chapter 105 of the General Statutes. All other provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes shall apply to this Part to the extent they are not inconsistent with the provisions of this Part. However, the exemptions and exclusions under G.S. 105-164.13 and G.S. 105-164.3(19) and the lower rates of tax imposed have no effect on the scrap tire disposal fee. The refund provisions under G.S. 105-164.14(a), (b), and (c) do not apply. The Secretary of Revenue may

~~1 administer, enforce, collect and distribute the scrap tire
2 disposal fee. The administrative interpretation made by the
3 Secretary of Revenue with respect to the North Carolina Sales and
4 Use Tax Act applies to the scrap tire disposal fee to the extent
5 they are not inconsistent."~~

6 Sec. 4. G.S. 130A-309.55 and 130A-309.56 are repealed.

7 Sec. 5. G.S. 130A-309.58(e) reads as rewritten:

8 "(e) A county shall provide, directly or by contract with
9 another unit of local government or private entity, at least one
10 site for scrap tire disposal for that county. The unit of local
11 government or contracting party may charge a disposal fee for the
12 disposal of in-county scrap tires ~~and such disposal fees shall be~~
13 ~~assessed~~ only to the extent that the cost per tire of disposal
14 exceeds the ~~scrap tire disposal fees amount~~ received by the
15 county under G.S. 105-187.19 during the preceding 12-month
16 period, divided by the number of tires disposed of within the
17 county according to the tire disposal procedures during that
18 period. The unit of local government or contracting party may
19 charge a disposal fee for the disposal of scrap tires ~~from tire~~
20 ~~manufacturers, retreaders not engaged in the retail sale of new~~
21 ~~tires, and any others subject to the scrap tire disposal fee,~~
22 ~~regardless of where such scrap tires originated, and such~~
23 ~~regardless of whether a tax has been paid on the tire under~~
24 ~~Article 5B of Chapter 105 and regardless of the tire's place of~~
25 ~~origin. The disposal fees shall may not exceed the cost of~~
26 ~~disposal for such tires.~~ disposal. The unit of local government
27 or contracting party also may charge a disposal fee for the
28 disposal of out-of-county and out-of-State scrap tires at the
29 county's site."

30 Sec 6. This act becomes effective July 1, 1991.

Explanation of Proposal 5

This proposal makes the changes described below in the scrap tire disposal "fee" currently imposed by Article 9 of Chapter 130A of the General Statutes. The first of these changes is substantive and the last two are technical. The proposal:

- (1) Extends the scrap tire disposal fee to new tires for farm equipment, road construction equipment, special mobile equipment, and used vehicles offered for sale, lease, or rental.
- (2) Moves the levy of the fee from Chapter 130A to Chapter 105 of the General Statutes.
- (3) Calls the levy a tax rather than a fee.

The 1989 General Assembly imposed a scrap tire disposal "fee" on new motor vehicle tires sold at retail. Because the levy applies only to motor vehicle tires and to tires sold at retail, not all new tires are subject to the fee. The definition of motor vehicle that applies to the fee excludes farm equipment, road construction equipment, and special mobile equipment. Therefore, a new tire for a tractor, an earth mover, a well-drilling rig, and any other vehicle that falls in a category of vehicles excluded from the definition of motor vehicle is not subject to the fee. The definition of retail sale excludes sales of tires that are placed on a motor vehicle offered for sale, lease, or rental. Therefore, new tires sold for used cars offered for sale, lease, or rental by a dealer are also excluded from the fee.

The Revenue Laws Study Committee found that the current limitations of the scrap tire disposal fee to motor vehicle tires and to tires sold at retail are not consistent with the purpose of the fee. As stated in G.S. 130A-309.54, the purpose of the fee is to provide funds for the disposal of scrap tires. By limiting the fee to motor vehicle tires and to tires sold at retail, however, many tires that contribute to the disposal problem are not subject to the fee. The Committee therefore recommends that the fee be expanded to include all vehicle tires other than aircraft tires, bicycle tires and other tires for human-powered vehicles, and recapped tires.

In addition to the substantive change in scope, the Committee recommends the two technical changes described above. In examining the statutes that levy the scrap tire disposal fee, the Committee found that the current fee is, in fact, nothing more than a simple supplemental sales tax and should therefore be placed in Chapter 105 of

the General Statutes, the tax chapter, rather than Chapter 130A and should be called by its proper name. The current use of the word "fee" to describe the tax contradicts the definition of a disposal fee in G.S. 130A-309.53(2). By definition, a disposal fee is supposed to be a charge imposed by a local unit of government or another entity for accepting a tire for disposal.

Proposal 5

Short Title: Pay Scrap Tire Tax On All New Tires

Explanation of Bill

The proposed legislation expands the 1% tire tax to include all new tires sold at retail. Replacement tires for vehicles whose primary use is off road and tires for used vehicles to be sold or rented are to be taxed. The tires that remain exempt from the tax are aircraft tires, tires for vehicles propelled by humans, and recapped tires. The proposed bill moves the Scrap Tire Disposal Fee from G.S. 130A-309.54 to G.S. 105-187.16.

The method of collecting the tax, the distribution of the receipts, and the use of the receipts by a county for scrap tire disposal, outlined in the 1989 legislation, are not changed by this act.

Effective Date

This act shall become effective July 1, 1991.

Fiscal Effect

The additional revenue due to the proposed legislation is estimated to be \$150,000 annually.

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PROPOSAL 6 (91-LCX-013(9.21))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Update I.R.C. Reference.

(Public)

Sponsors: Representatives Lilley; Abernethy Brawley, Hasty.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED
3 TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-2.1 reads as rewritten:
6 "**§ 105-2.1. Internal Revenue Code definition.**
7 As used in this Article, the term 'Code' means the Internal
8 Revenue Code as enacted as of ~~January 1, 1990~~, January 1, 1991,
9 and includes any provisions enacted as of that date which become
10 effective either before or after that date."
11 Sec. 2. G.S. 105-114(b)(1) reads as rewritten:
12 "(1) The term 'Code' means the Internal Revenue Code as
13 enacted as of ~~January 1, 1990~~, January 1, 1991, and
14 includes any provisions enacted as of that date
15 which become effective either before or after that
16 date."
17 Sec. 3. G.S. 105-130.2(1) reads as rewritten:
18 "(1) 'Code' means the Internal Revenue Code as enacted
19 as of ~~January 1, 1990~~, January 1, 1991, and
20 includes any provisions enacted as of that date
21 which become effective either before or after that
22 date."
23 Sec. 4. G.S. 105-131(b)(1) reads as rewritten:
24 "(1) 'Code' means the Internal Revenue Code as enacted
25 as of ~~January 1, 1990~~, January 1, 1991, and

1 includes any provisions enacted as of that date
2 which become effective either before or after that
3 date."

4 Sec. 5. G.S. 105-134.1(1) reads as rewritten:

5 "(1) Code. The Internal Revenue Code as enacted as of
6 ~~January 1, 1990, January 1, 1991,~~ including any
7 provisions enacted as of that date which become
8 effective either before or after that date. ~~date,~~
9 ~~but not including sections 63(c)(4) and 151(d)(3).~~"

10 Sec. 6. G.S. 105-134.6(b)(8) reads as rewritten:

11 "(8) The amount by which the taxpayer's ~~mortgage~~
12 ~~interest deduction deductions~~ allowed under the
13 Code ~~was reduced pursuant to section 163(g) of the~~
14 ~~Code.~~ were reduced, and the amount of the
15 taxpayer's deductions that were not allowed,
16 because the taxpayer elected a federal tax credit
17 in lieu of a deduction, to the extent that a
18 similar credit is not allowed by this Division for
19 the amount."

20 Sec. 7. G.S. 105-134.6(c)(4) reads as rewritten:

21 "(4) The amount by which the taxpayer's standard
22 deduction has been increased for inflation under
23 section 63(c)(4) of the Code and the amount by
24 which the taxpayer's personal exemptions have been
25 increased for inflation under section 151(d)(3)
26 151(d)(4) of the Code. For the purpose of this
27 subdivision, if the taxpayer's personal exemptions
28 have been reduced by the applicable percentage
29 under section 151(d)(3) of the Code, the amount by
30 which the personal exemptions have been increased
31 for inflation is also reduced by the applicable
32 percentage."

33 Sec. 8. G.S. 105-163.1(1) reads as rewritten:

34 "(1) Code.--The Internal Revenue Code as enacted as of
35 ~~January 1, 1990, January 1, 1991,~~ including any
36 provisions enacted as of that date which become
37 effective either before or after that date."

38 Sec. 9. G.S. 105-212(f) reads as rewritten:

39 "(f) As used in this section, the term 'Code' means the
40 Internal Revenue Code as enacted as of ~~January 1, 1990, January~~
41 1, 1991, and includes any provisions enacted as of that date
42 which become effective either before or after that date."

43 Sec. 10. This act is for taxable years beginning on or
44 after January 1, 1991.

Explanation of Proposal 6

Legislative Proposal 6 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1990, to January 1, 1991. Updating the reference makes recent amendments to the Internal Revenue Code applicable to the State to the extent that State tax law previously tracked federal law. This update has the greatest effect on State corporate and individual income taxes because these taxes are based on federal taxable income and are therefore closely tied to federal law. The inheritance tax, franchise tax, and intangibles tax also determine some exemptions based on the provisions of the Code.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code as it existed on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law recently and the likelihood of continued changes, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue losses. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, § 2(1) of the Constitution provides in pertinent part that the "power of taxation... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would... be invalidated as an unconstitutional delegation of legislative power."

Each year, in deciding whether the Internal Revenue Code reference should be updated, the Revenue Laws Study Committee considers the changes that have been made to the Code in the past year. The Revenue Laws Study Committee learned this year that a number of changes made by the Revenue Reconciliation Act of 1990 will affect the State corporate and individual income tax. The changes in corporate tax law are fairly minor and will not have a significant impact on State revenues. These changes are summarized in Appendix E.

The State individual income tax will not be affected by the changes in the federal tax rate structure made in 1990; these changes include an increase in the maximum tax rate to 31%, a lower rate for capital gains, and an increase in the alternative minimum tax rate. Recent changes in the calculation of federal taxable income will, however, have a significant impact on North Carolina individual income tax. Beginning with the 1991 tax year, the Internal Revenue Code provides that the deduction for personal exemptions is phased out for taxpayers with adjusted gross income above a threshold amount. The threshold amounts are \$150,000 for married couples filing jointly and \$100,000 for single taxpayers. The personal exemptions must be reduced by 2% for every \$2,500, or fraction thereof, by which the taxpayer's income exceeds the threshold. The personal exemptions are fully phased-out by the time a married couple's income reaches \$272,500 and a single taxpayer's income reaches \$222,500. The phase-out would become part of the North Carolina tax structure if the Code reference is up-dated to 1991. A technical correction will be needed because the changes included a renumbering of some Code subsections.

Another major change in the Code is the limitation on itemized deductions for high income taxpayers. Effective beginning with the 1991 tax year, taxpayers must reduce their itemized deductions by 3% of the amount by which their adjusted gross income exceeds \$100,000. For married individuals filing separately, the threshold is \$50,000. A taxpayer's itemized deductions may not be reduced by more than 80%. The reduction in allowable deductions would result in an increase in federal taxable income, the basis for North Carolina taxable income, if the Code reference is updated to 1991.

Two changes in the Code will necessitate a technical adjustment to the State tax law. The Revenue Reconciliation Act of 1990 enacted two new tax credits which, if elected by a taxpayer, require the taxpayer to reduce related federal deductions. State tax law does not pick up federal tax credits, but the reduction of the taxpayer's deductions would be passed through for State purposes. A technical correction provided

in Section 6 of the proposal would allow the taxpayer the full benefit of otherwise allowable federal deductions in the calculation of North Carolina taxable income when there is no corresponding State tax credit.

The Revenue Reconciliation Act of 1990 contained a number of other changes that would affect the individual income tax if the Code reference is updated to 1991. These changes include disallowance of a medical expense deduction for cosmetic surgery, extending income exclusions for certain employer-paid benefits, extending a deduction for health insurance costs paid by self-employed individuals, reducing a deduction for costs of making businesses accessible to disabled individuals, and expanding the percentage depletion allowance for oil and gas producing properties. These changes are explained in more detail in a memorandum prepared by the Department of Revenue, included in pages 3-7 of Appendix E.

Following this explanation is an analysis of the fiscal impact of incorporating all the 1990 federal changes by updating the reference to the Internal Revenue Code to 1991.

Explanation of Proposal:

For years the state personal and corporate income tax law has been tied to the Internal Revenue Code to one degree or another. Since the N.C. Constitution prohibits an automatic conformity to future federal changes, each session the General Assembly considers legislation recommended by the Revenue Laws Study Committee to update the conformity by one year. The effect is to pick up any federal changes that have been made during the last year.

The bill updates the State tax conformity to federal law from January 1, 1990 to January 1, 1991. This includes any federal provisions enacted as of January 1, 1991 which become effective either before or after that date.

Effective Date:

Tax years beginning on or after January 1, 1991.

Fiscal Effect:

The major items in the Revenue Reconciliation Act of 1990 that would have an impact on North Carolina include:

- (1) the phase-out of personal exemptions for married couples whose adjusted gross income exceeds \$150,000 (\$100,000 for single taxpayers) on the basis of a 2% reduction for each \$2,500 of income exceeding the threshold, and
- (2) the phase-down of certain itemized deductions for taxpayers whose adjusted gross income exceeds \$100,000 on the basis of 3% of the amount by which \$100,000 of income is exceeded (maximum reduction is 80% of deductions).

Based on an adjustment of federal data, the additional state General Fund tax revenue from updating conformity would be at least \$10 million per year, beginning with the 1991-92 fiscal year.

GENERAL ASSEMBLY OF NORTH CAROLINA

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PROPOSAL 7 (91-LCX-008(10.26))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Repeal Inheritance Tax Exemptions. (Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPEAL INHERITANCE TAX EXEMPTIONS FOR CERTAIN TYPES OF
PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-3 reads as rewritten:

"§ 105-3. Property exempt.

The following property shall be exempt from taxation under
this Article:

(1) Property passing to or for the use of any one or
more of the following: the United States, any
state, territory or any political subdivision
thereof, or the District of Columbia, for
exclusively public purposes.

(2) Property passing to religious, charitable, or
educational corporations, or to churches,
hospitals, orphan asylums, public libraries,
religious, or charitable organizations, or passing
to any trustee or trustees for religious or
charitable purposes, where such religious,
charitable, or educational institutions,
corporations, churches, trusts, etc., are located
within the State and not conducted for profit.

(3) Property passing to religious, educational, or
charitable corporations, foundations or trusts, not

1 conducted for profit, incorporated or created or
2 administered under the laws of any other state: If
3 such other state levies no inheritance or estate
4 taxes on property similarly passing from residents
5 of such state to religious, educational or
6 charitable corporations, foundations or trusts
7 incorporated or created or administered under the
8 laws of this State; or if such corporation,
9 foundation or trust is one receiving and disbursing
10 funds donated in this State for religious,
11 educational or charitable purposes.

- 12 (4) The proceeds of all life insurance policies payable
13 to beneficiaries named in subdivisions (1), (2) and
14 (3) of this section. And also proceeds of all
15 policies of insurance and the proceeds of all
16 adjusted service certificates that have been or may
17 be paid by the United States government, or that
18 have been or may be paid on account of policies
19 required to be carried by the United States
20 government or any agency thereof, to the estate,
21 beneficiary, or beneficiaries of any person who has
22 served in the armed forces of the United States or
23 in the merchant marine during the first or second
24 World War or any subsequent military engagement;
25 and proceeds, not exceeding the sum of twenty
26 thousand dollars (\$20,000), of all policies of
27 insurance paid to the estate, beneficiary or
28 beneficiaries of any person whose death was caused
29 by enemy action during the second World War or any
30 subsequent military engagement involving the United
31 States. This provision will be operative only when
32 satisfactory proof that the death was caused by
33 enemy action is filed by the executor,
34 administrator, or beneficiary with the Secretary of
35 Revenue.

- 36 ~~(5) The value of an annuity or other payment receivable~~
37 ~~by any beneficiary (other than the executor) under~~
38 ~~(a) an employees' trust (or under a contract or~~
39 ~~insurance policy purchased by an employees' trust)~~
40 ~~forming part of a pension, stock bonus, or~~
41 ~~profit-sharing plan, which at the time of the~~
42 ~~decendent's separation from employment (whether by~~
43 ~~death or otherwise), or at the time of termination~~
44 ~~of the plan if earlier, met the requirements of 26~~

~~U.S.C. § 401(a); or (b) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan, which at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of 26 U.S.C. § 403(a) or § 403(b). If such amounts payable after the death of the decedent under a plan described in clause (a) or (b) are attributable to any extent to payments or contributions made by the decedent, no exemption shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of the preceding sentence contributions or payments made by the decedent's employer or former employer under a trust or plan described in clause (a) or (b) shall not be considered to be contributed by the decedent nor shall any deductible employee contributions within the meaning of 26 U.S.C. § 72(o)(5) be considered to have been contributed by the decedent. For purposes of this subdivision, contributions or payments on behalf of the decedent while he was an employee within the meaning of 26 U.S.C. § 401(c)(1) made under a trust or plan described in clause (a) or (b) shall, to the extent allowable as a deduction under 26 U.S.C. § 404, be considered to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent. Provided, that the value of such annuities or other payments receivable described in this subdivision shall not be exempt unless the payments received therefrom are or will be subject to income taxation under Article 4 of this Subchapter, and if such payments are not or will not be subject to income taxation under Article 4 of this Subchapter the value of such annuities or other payments receivable shall be included in the gross value of the estate of the decedent and taxable under the provisions of this Article.~~

(6) ~~The value of an annuity receivable by any beneficiary (other than the executor) under:~~

- ~~a. An individual retirement account described in section 408(a) of the Code,~~
- ~~b. An individual retirement annuity described in section 408(b) of the Code, or~~
- ~~c. A retirement bond described in section 409(a) of the Code.~~
- ~~If any payment to an account described in paragraph a or for an annuity described in paragraph b or a bond described in paragraph c was not allowable as a deduction under 26 U.S.C. § 219 or § 220 and was not a rollover contribution described in 26 U.S.C. §§ 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C), the preceding sentence shall not apply to that portion of the value of the amount receivable under such account, annuity, or bond (as the case may be) which bears the same ratio to the total value of the amount so receivable as the total amount which was paid to or for such account, annuity, or bond and which was not allowable as a deduction under 26 U.S.C. § 219 or § 220 and was not such a rollover contribution bears to the total amount paid to or for such account, annuity, or bond. For purposes of this subdivision, the term 'annuity' means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary (other than the executor) for his life or over a period extending for at least 36 months after the date of the decedent's death.~~
- ~~(7) The total value of proceeds of an annuity or other payment receivable by any beneficiary (other than the executor) under a military family protection, or survivor benefit, plan, or other comparable plan, pursuant to Chapter 73 of Title 10 of the United States Code.~~
- (8) Repealed by Session Laws 1989 (Regular Session 1990), c. 970, s. 1.
- (9) The total value of death benefits paid to a decedent's estate or a named beneficiary from voluntary pledges made by the North Carolina Highway Patrol or other association of law-

1 enforcement officers employed by the State or a
2 county or municipality, if the benefits are paid
3 from an assessment against the members of the
4 association.

5 (10) Property passing to the surviving spouse of a
6 decedent."

7 Sec. 2. This act becomes effective September 1, 1991,
8 and applies to the estates of decedents dying on or after that
9 date.

Explanation of Proposal 7

Legislative Proposal 7 repeals inheritance tax exemptions for certain types of property. North Carolina's inheritance tax is a tax on the value of property that is transferred as a result of the death of an individual. Where the property is transferred to a surviving spouse, it is exempt from tax. The inheritance tax statutes divide all other beneficiaries into three classes--A, B, and C. Class A beneficiaries, lineal ancestors and descendants of the decedent (including stepchildren and adopted descendants), are allowed a collective credit of \$26,150 against the tax imposed on property transferred to them. This credit effectively exempts at least the first \$500,000 in property transferred to Class A beneficiaries. Other relatives and unrelated beneficiaries are taxed on all property passing to them.

In response to a 1989 United States Supreme Court decision requiring equal tax treatment of state, local, and federal retirees, the General Assembly repealed the exemptions for state and local retirement benefits in 1989 and the exemption for certain federal civil service retirement benefits in 1990. As directed by Chapter 970 of the 1989 Session Laws, the Study Committee examined the remaining inheritance tax exemptions for various types of property. These exemptions were all enacted before the 1985 law that provides a complete exemption for property passing to a surviving spouse and an effective exemption for approximately \$500,000 in property passing to lineal ancestors and descendants. If the rationale for an exemption was largely to protect property passing to a spouse, children, or grandchildren, then that rationale would no longer be present in the case of most decedents, those whose estates are worth less than \$500,000. The Study Committee also examined federal estate tax exemptions in evaluating the State's inheritance tax exemption structure.

Legislative Proposal 7 contains the Committee's recommendations for repeal of some inheritance tax exemptions. First, it would repeal the exemption for pension, profit-sharing, and stock bonus plans qualified under section 401 of the Internal Revenue Code and retirement annuity contracts qualified under section 403 of the Internal Revenue Code. These benefits are fully taxable under the federal estate tax. Proposal 7 would also repeal the exemption for annuities receivable under individual retirement accounts, annuities, and bonds (IRAs). The federal estate tax exemption for these annuities has been repealed. Finally, Proposal 7 would repeal the exemption for

federal military retirement and survivor benefits; there is no federal estate tax exemption for these benefits. The bill would become effective September 1, 1991, and would apply to the estates of decedents dying on or after that date.

Proposal 7

Short Title: Repeal Inheritance Tax Exemptions

Explanation of Bill

The proposed act repeals the inheritance tax exemptions on property pursuant to the following statutes:

G.S. 105-3(5)

The value of benefits received under (1), a qualified pension, profit sharing, or stock plan of an employer purchased by an employees' trust or (2) qualified annuities purchased by an employer, to the extent the benefits are not attributable to amounts contributed by the decedent.

G.S. 105-3(7)

The value of an annuity received under an individual retirement account, annuity, or bond.

G.S. 105-3(7)

The total value of the proceeds from an annuity or other retirement benefits under a military family protection or survivor benefit plan payable to a beneficiary.

Effective Date

This act becomes effective September 1, 1991, and applies to the estates of decedents dying on or after that date.

Fiscal Effect

Please refer to the fiscal report prepared by the Tax Research Division of the Department of Revenue on the following page.



North Carolina Department of Revenue

James G. Martin, Governor

November 27, 1990

Betsy Y. Justus, Secretary

MEMORANDUM

TO: H. Warren Plonk
Fiscal Research Division

FROM: Niki Underwood, Director *NU*
Tax Research Division

SUBJECT: Estimated gain from repeal of inheritance tax exemptions

This is in response to your request for the estimated revenue gain from repeal of the inheritance tax exemptions set forth in G.S. 105-3(5), 105-3(6), and 105-3(7), all of which deal with various types of pension, profit-sharing, retirement annuities, and similar plans.

We have been unable to locate data from which to estimate the actual impact. From conversations with personnel in the Inheritance and Gift Tax Division, it appears that these exemptions occur relatively infrequently in taxable situations. The full exemption of property passing to a surviving spouse along with the sizeable tax credit for other Class A beneficiaries limits the impact of repeal to those situations in which the benefits are left to Class B and Class C beneficiaries and to very large estates with non-spousal Class A beneficiaries.

Based on a review of the general inheritance tax data available and on the judgment of personnel administering the tax, it is very unlikely that the gain from repeal of these exemptions would exceed \$100,000 on an annual basis.

cc: Myron C. Banks
Michael S. Hodges
George B. Robinson



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 8 (91-LC-017(10.3))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Indemnify Tax Official.

(Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR PAYMENT OF EXCESS DAMAGES AGAINST A STATE
EMPLOYEE FOR COLLECTING OR ADMINISTERING AN UNCONSTITUTIONAL
TAX.

The General Assembly of North Carolina enacts:

Section 1. Article 31A of Chapter 143 of the General
Statutes is amended by adding at the end a new section to read:

"§ 143-300.9. Payment of excess damages relating to
unconstitutional taxes.

In an action to which this Article applies, the State shall pay
the excess amount of a judgment or settlement under G.S.
143-300.6 for damages against a State employee for collecting or
administering a tax that is held unconstitutional. The excess
amount is the amount of the judgment or settlement over (i) the
limit provided in G.S. 143-300.6(a) and (ii) any coverage under
G.S. 58-32-15. This section does not waive the sovereign
immunity of the State with respect to any claim."

Sec. 2. G.S. 143-300.6 reads as rewritten:

"§ 143-300.6. Payments of judgments; compromise and settlement of
claims.

(a) Payment of Judgments and Settlements. In an action to
which this Article applies, the State shall pay (i) a final
judgment awarded in a court of competent jurisdiction against a
State employee or (ii) the amount due under a settlement of the

1 action under this section. The unit of State government by which
2 the employee was employed shall make the payment. This section
3 does not waive the sovereign immunity of the State with respect
4 to any claim. A payment of a judgment or settlement of a claim
5 against a State employee or several State employees as joint
6 tortfeasors may not exceed the amount payable for one claim under
7 the Tort Claims Act. All final judgments awarded in courts of
8 competent jurisdiction against State employees in actions or
9 suits to which this Article applies, or any amounts payable under
10 a settlement of such suits in accordance with this section, shall
11 be paid by the department, agency, board, commission,
12 institution, bureau or authority which employs or employed the
13 State employee. Nothing in this section shall be deemed to waive
14 the sovereign immunity of the State with respect to a claim
15 covered by this section. No payment of a judgment or settlement
16 of a claim against a State employee or several State employees as
17 joint tort-feasors shall exceed the amount payable for any one
18 claim under the Tort Claims Act.

19 (b) Settlement of Claims. The Attorney General may compromise
20 and settle any claim covered by this section to the extent that
21 he finds the same to be valid, claim valid. A settlement in
22 excess of the limit provided in subsection (a) must be approved
23 by the employee. In an action in which the Attorney General has
24 stated in writing that private counsel should be provided the
25 employee because of a conflict of interest between the employee
26 and the State, a settlement in excess of the limit provided in
27 subsection (a) must be approved by the private counsel.
28 provided that no settlement of any such claim in an amount in
29 excess of the limit provided in the Tort Claims Act shall be made
30 without the approval of the employee. In a case wherein the
31 Attorney General has stated in writing that private counsel ought
32 to be provided because of a conflict with the interests of the
33 State, the settlement in excess of the limit provided in the Tort
34 Claims Act must be approved by the private counsel.

35 (c) Other Insurance. The coverage afforded employees and
36 former employees under this Article shall be excess coverage over
37 any commercial liability insurance up to the limit of the Tort
38 Claims Act, insurance, other than insurance written under G.S.
39 58-32-15, up to the limit provided in subsection (a). except that
40 this subsection shall not apply to programs of insurance written
41 under the authority of G.S. 143B-424.1; and programs of insurance
42 written under G.S. 143B-424.1 shall not be deemed to be
43 commercial liability insurance within the meaning of this
44 section."

1 Sec. 3. G.S. 58-32-15(b) reads as rewritten:

2 "(b) The Commission, pursuant to this section, may acquire
3 professional liability insurance covering the officers and
4 employees, or any group thereof, of a department, institution or
5 agency of State government or a community college or technical
6 college only if the coverage to be provided by such the insurance
7 policy is in excess of the protection provided by Articles 31 and
8 31A of ~~General Statutes Chapter 143.~~ Chapter 143 of the General
9 Statutes, other than the protection provided by G.S. 143-300.9."

10 Sec. 4. This act is effective upon ratification and
11 applies to payments made on or after the date of ratification.

Explanation of Proposal 8

Legislative Proposal 8 provides that the State will indemnify State employees who are held liable for damages for collecting or administering an unconstitutional tax. This proposal, which was requested by the Department of Revenue, arose from a court case that is pending against the State and the former Secretary of Revenue, Helen Powers.

During the course of its study, the Study Committee followed the progress of several lawsuits that have been filed against the State as a result of the 1989 United States Supreme Court case, Davis v. Michigan. That case held that a State cannot allow its own employees or retirees more favorable tax treatment than federal employees or retirees. In response to this decision, in 1989, North Carolina repealed its income tax exemption for State and local retirement benefits and enacted a law that allowed only a limited exemption for all retirees. State and local retirees have filed suit challenging this new law. In addition, because of the timing of the Supreme Court case, a number of federal retirees did not receive refunds for taxes paid on their retirement benefits in 1989 and earlier years. Two lawsuits have been filed seeking relief, one in State court and one in federal court. None of these cases has been finally resolved but, in the federal case, Swanson v. Powers, the lower court decision stated that the Secretary of Revenue could be held personally liable for damages for administering the type of law that was found unconstitutional in Davis v. Michigan. The damages could be assessed on the theory that the Secretary should have known that North Carolina's law would be held unconstitutional before Davis v. Michigan was decided and, therefore, when she administered the law, she was intentionally violating the constitutional rights of some taxpayers. The State cannot be held liable for these damages because of its sovereign immunity.

The Swanson case is being appealed and a reversal on this issue is expected, but its underlying theory is cause for concern. There are many types of taxes which raise constitutional questions that have never been resolved. As the Davis case illustrates, a new court ruling can invalidate a law that has been on the books and accepted by constitutional scholars for many years. Constitutional law is subtle and complex and is constantly evolving over time. Under the court's theory in the Swanson case, if the State chooses to enact a tax that raises an unresolved point of constitutional law, the Secretary and other tax officials are forced to choose between putting themselves at risk

for damages of millions of dollars or refusing to perform their legal duty to administer the tax.

Under current law, the State may indemnify a State employee for up to \$100,000 in damages awarded in a judgment or settlement in a civil or criminal action relating to the scope and course of the employee's employment. This protection, provided in Article 31A of Chapter 143 of the General Statutes, is similar to protection under the Tort Claims Act. If the Attorney General determines that it is in the State's best interest to defend a State employee, the State will provide a defense and will pay the damages up to the \$100,000 limit. In addition, the State has professional liability insurance for excess coverage of up to \$1,000,000 in certain cases. This insurance is obtained by the Public Officers and Employees Liability Insurance Commission in the Department of Insurance.

The existing coverage protects State employees in many cases but, due to the \$1,000,000 limit, it would not be enough to pay the potential multi-million dollar award in Swanson or another case challenging the constitutionality of a tax law. In order to protect tax officials from this potential exposure as a result of administering the laws that the State asks them to administer, the Study Committee recommended Legislative Proposal 8. The Proposal is designed to free State employees from having to evaluate the constitutionality of each tax that the General Assembly enacts and pay damages if they fail to recognize that a tax will later be held unconstitutional. The liability for paying damages for an unconstitutional tax would remain with the State.

Section 1 of the bill provides that the State shall pay the excess amount of a judgment or settlement against a State employee for collecting or administering a tax that is held unconstitutional. The excess amount is the amount above the existing \$100,000 protection and any insurance coverage over that limit. Section 2 of the bill reorganizes and clarifies the existing law that provides for payment of judgments and settlements up to the \$100,000 limit. Section 3 of the bill clarifies that the new statute provides protection only for amounts in excess of the insurance coverage provided by the Public Officers and Employees Liability Insurance Commission. Section 4 of the bill provides that it is effective upon ratification.

The bill does not provide a source of funds to pay these awards. If a multi-million dollar award were made against a State employee, the State would be legally responsible. It was pointed out to the Committee that such an obligation might have an impact on the State's bond rating. The State is protected, however, against having to pay damages that arise from an employee's egregious behavior. As mentioned

earlier, the State can decline to become responsible for a case if the Attorney General determines that it is not in the best interest of the State to do so.

Background Information:

In a recent case in federal district court dealing with the question of whether the State must refund income taxes paid on federal pensions for 1988 and earlier tax years, the court ruled that the Secretary of Revenue could be held personally liable for damages for administering a law that was ultimately determined to be unconstitutional. In most cases where a State act is ruled unconstitutional, the practice is for the State to be the liable party.

Explanation of Proposal:

The proposal provides that the State will indemnify State employees who are held liable for damages for administering or collecting an illegal tax. The indemnification would be equal to the amount of the judgment in excess of the \$100,000 that is provided under current law.

Effective Date:

Upon ratification.

Fiscal Effect:

The case that brought this issue forward is still under appeal and thus there is no way to know whether any damages will be assessed against the Secretary of Revenue.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 9 (91-LCX-007(8.24))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Nonresident Joint Returns.

(Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW A NONRESIDENT COUPLE TO FILE A JOINT INCOME TAX
RETURN IF ONLY ONE SPOUSE HAS INCOME FROM NORTH CAROLINA
SOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-152 reads as rewritten:

"§ 105-152. Returns.

(a) The following persons shall file with the Secretary an
income tax return under affirmation, showing specifically the
taxable income and the adjustments required by this Division, and
such other facts as the Secretary may require for the purpose of
making any computation required by this Division:

(1) Every resident required to file an income tax
return for the taxable year under the Code and
every nonresident who (i) derived gross income from
North Carolina sources during the taxable year
attributable to the ownership of any interest in
real or tangible personal property in this State or
derived from a business, trade, profession, or
occupation carried on in this State and (ii) is
required to file an income tax return for the
taxable year under the Code.

(1a) Every nonresident whose spouse is required to file
a return under subdivision (1) and whose federal

1 taxable income is determined on a joint federal
2 return.

3 (2) Every partnership doing business in this State as
4 provided in G.S. 105-154.

5 (3) Any person whom the Secretary believes to be liable
6 for a tax under this Division, when so notified by
7 the Secretary and requested to file a return.

8 (b) If the taxpayer is unable to make his own return, the
9 return shall be made by a duly authorized agent or by a guardian
10 or other person charged with the care of the person or property
11 of the taxpayer.

12 (c) The return of an individual who was required to file a
13 return for the taxable year while living and who has died before
14 making the return, shall be made in his name and behalf by the
15 administrator or executor of the estate, and the tax shall be
16 levied upon and collected from the estate.

17 (d) When the Secretary has reason to believe that any taxpayer
18 so conducts a trade or business as either directly or indirectly
19 to distort the taxpayer's taxable income or North Carolina
20 taxable income whether by the arbitrary shifting of income,
21 through price fixing, charges for service, or otherwise, whereby
22 the net income is arbitrarily assigned to one or another unit in
23 a group of taxpayers carrying on business under a substantially
24 common control, the Secretary may require such facts as he deems
25 necessary for the proper computation of the taxable income and
26 the North Carolina taxable income, and in determining the same
27 the Secretary shall have regard to the fair profit that would
28 normally arise from the conduct of the trade or business.

29 ~~A joint return may be filed by a husband and wife as~~
30 ~~provided in G.S. 105-152.1. A husband and wife shall make a~~
31 ~~single return jointly if their federal taxable income is~~
32 ~~determined on a joint federal return.~~ Except as otherwise
33 provided in this Division, a wife and husband filing jointly are
34 treated as one taxpayer for the purpose of determining the tax
35 imposed by this Division. A husband and wife filing jointly are
36 jointly and severally liable for the tax imposed by this Division
37 reduced by the sum of all credits allowable under this Division
38 including tax payments made by or on behalf of the husband and
39 wife. However, if a spouse has been relieved of liability for
40 federal tax attributable to a substantial understatement by the
41 other spouse pursuant to section 6013 of the Code, that spouse is
42 not liable for the corresponding tax imposed by this Division
43 attributable to the same substantial understatement by the other
44 spouse. A wife and husband filing jointly shall be deemed to

1 have expressly agreed that if the amount of the payments made by
2 them with respect to the taxes for which they are liable,
3 including withheld and estimated taxes, exceeds the total of the
4 taxes due, refund of the excess may be made payable to both
5 spouses jointly or, if either is deceased, to the survivor alone.

6 (f) The Secretary may require some or all persons required to
7 file a return under this section to attach to the return a copy
8 of their federal income tax return for the taxable year. The
9 Secretary may require a taxpayer to provide the Department with
10 copies of any other return the taxpayer has filed with the
11 Internal Revenue Service and to verify any information in the
12 return."

13 Sec. 2. G.S. 105-152.1 is repealed.

14 Sec. 3. G.S. 105-134.2(a) reads as rewritten:

15 "(a) A tax is imposed upon the North Carolina taxable income of
16 every individual. The tax shall be levied, collected, and paid
17 annually and shall be computed at the following percentages of
18 the taxpayer's North Carolina taxable income.

19 (1) For married individuals who file a joint return
20 under ~~G.S. 105-152.1~~ G.S. 105-152 and for surviving
21 spouses, as defined in section 2(a) of the Code:

22 On the North Carolina taxable income up to
23 twenty-one thousand two hundred fifty dollars
24 (\$21,250), six percent (6%); and

25 On the excess over twenty-one thousand two
26 hundred fifty dollars (\$21,250), seven percent
27 (7%).

28 (2) For heads of households, as defined in section 2(b)
29 of the Code:

30 On the North Carolina taxable income up to
31 seventeen thousand dollars (\$17,000), six
32 percent (6%); and

33 On the excess over seventeen thousand dollars
34 (\$17,000), seven percent (7%).

35 (3) For unmarried individuals other than surviving
36 spouses and heads of households:

37 On the North Carolina taxable income up to
38 twelve thousand seven hundred fifty dollars
39 (\$12,750), six percent (6%); and

40 On the excess over twelve thousand seven
41 hundred fifty dollars (\$12,750), seven percent
42 (7%).

43 (4) For married individuals who do not file a joint
44 return under ~~G.S. 105-152.1~~ G.S. 105-152:

On the North Carolina taxable income up to ten thousand six hundred twenty-five dollars (\$10,625), six percent (6%); and
On the excess over ten thousand six hundred twenty-five dollars (\$10,625), seven percent (7%)."

Sec. 4. G.S. 105-151.2(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 5. G.S. 105-151.7(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 6. G.S. 105-151.8(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 7. G.S. 105-151.9(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this ~~section.~~ section on a separate return."

Sec. 8. G.S. 105-151.10(b) reads as rewritten:

"(b) In the case of property owned by the entirety, ~~where~~ if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is required to file a North Carolina

1 income tax return, that spouse may claim the credit allowed by
2 this ~~section.~~ section on a separate return."

3 Sec. 9. G.S. 105-151.12(d) reads as rewritten:

4 "(d) In the case of property owned by the entirety, ~~where if~~
5 both spouses are required to file North Carolina income tax
6 returns, the credit allowed by this section may be claimed only
7 if the spouses file a joint ~~return under G.S. 105-152.1.~~ return.
8 ~~Where~~ If only one spouse is required to file a North Carolina
9 income tax return, that spouse may claim the credit allowed by
10 this ~~section.~~ section on a separate return."

11 Sec. 10. G.S. 105-151.13(c) reads as rewritten:

12 "(c) In the case of conservation tillage equipment owned
13 jointly by a husband and wife, ~~where if~~ both spouses are required
14 to file North Carolina income tax returns, the credit allowed by
15 this section may be claimed only if the spouses file a joint
16 ~~return under G.S. 105-152.1.~~ return. ~~Where~~ If only one spouse is
17 required to file a North Carolina income tax return, that spouse
18 may claim the credit allowed by this ~~section.~~ section on a
19 separate return."

20 Sec. 11. G.S. 105-163.16(d) reads as rewritten:

21 "(d) When a husband and wife have ~~electd under G.S. 105-152.1~~
22 ~~to file~~ filed a joint return and a refund for overpayment of tax
23 is made payable to both spouses as provided in that subsection,
24 the provisions of this section shall apply to the refund."

25 Sec. 12. G.S. 105-259 reads as rewritten:

26 "§ 105-259. Secrecy required of officials; penalty for
27 violation.

28 With respect to any one of the following persons: (i) the
29 Secretary of Revenue and all other officers or employees, and
30 former officers and employees, of the Department of Revenue; (ii)
31 local tax officials, as defined in G.S. 105-273, and former local
32 tax officials; (iii) members and former members of the Property
33 Tax Commission; (iv) any other person authorized in this section
34 to receive information concerning any item contained in any
35 report or return, or authorized to inspect any report or return;
36 and (v) the Commissioner of Insurance and all other officers or
37 employees and former officers and employees of the Department of
38 Insurance with respect to State and federal income tax returns
39 filed with the Commissioner of Insurance by domestic insurance
40 companies; and except in accordance with proper judicial order or
41 as otherwise provided by law, it shall be unlawful for any of
42 these persons to divulge or make known in any manner the amount
43 of income, income tax or other taxes of any taxpayer, or
44 information relating thereto or from which the amount of income,

1 income tax or other taxes or any part thereof might be
2 determined, deduced or estimated, whether it is set forth or
3 disclosed in or by means of any report or return required to be
4 filed or furnished under this Subchapter, or in or by means of
5 any audit, assessment, application, correspondence, schedule or
6 other document relating to the taxpayer, notwithstanding the
7 provisions of Chapter 132 of the General Statutes or of any other
8 law or laws relating to public records. It shall likewise be
9 unlawful to reveal whether or not any taxpayer has filed a
10 return, and to abstract, compile or furnish to any person, firm
11 or corporation not otherwise entitled to information relating to
12 the amount of income, income tax or other taxes of a taxpayer,
13 any list of names, addresses, social security numbers or other
14 personal information concerning the taxpayer, whether or not the
15 list discloses a taxpayer's income, income tax or other taxes, or
16 any part thereof, except that ~~when an election is made by a~~
17 ~~husband and wife under G.S. 105-152.1 to file a joint return, if~~
18 a husband and wife file a joint return, any information given to
19 one spouse concerning the income or income tax of the other
20 spouse reported or reportable on the joint return shall not be a
21 violation of the provisions of this section.

22 Nothing in this section shall be construed to prohibit the
23 publication of statistics, so classified as to prevent the
24 identification of particular reports or returns, and the items
25 thereof; the inspection of these reports or returns by the
26 Governor, Attorney General, or their duly authorized
27 representative; or the inspection by a legal representative of
28 the State of the report or return of any taxpayer who shall bring
29 an action to set aside or review the tax based thereon, or
30 against whom an action or proceeding has been instituted to
31 recover any tax or penalty imposed by this Subchapter; nor shall
32 the provisions of this section prohibit the Department of Revenue
33 furnishing information to other governmental agencies of persons
34 and firms properly licensed under Schedule B, G.S. 105-33 to
35 105-113. The Department of Revenue may exchange information with
36 the officers of organized associations of taxpayers under
37 Schedule B, G.S. 105-33 to 105-113, with respect to parties
38 liable for these taxes and as to parties who have paid these
39 license taxes.

40 When any record of the Department of Revenue has been
41 photographed, photocopied, or microphotocopied pursuant to the
42 authority contained in G.S. 8-45.3, the original of that record
43 may thereafter be destroyed at any time upon the order of the
44 Secretary of Revenue, notwithstanding the provisions of G.S.

1 121-5, G.S. 132-2, or any other law relating to the preservation
2 of public records. Any record that has not been so photographed,
3 photocopied, or microphotocopied shall be preserved for three
4 years, and thereafter until the Secretary of Revenue orders it
5 destroyed.

6 Any person, officer, agent, clerk, employee, or local tax
7 official or any former officer, employee, or local tax official
8 who violates the provisions of this section shall be guilty of a
9 misdemeanor and fined not less than two hundred dollars (\$200.00)
10 nor more than one thousand dollars (\$1,000) and/or imprisoned, in
11 the discretion of the court; and if the person committing the
12 violation is a public officer or employee, that person shall be
13 dismissed from such office or employment, and may not hold any
14 public office or employment in this State for a period of five
15 years thereafter.

16 Notwithstanding the provisions of this section, the Secretary
17 of Revenue may permit the Commissioner of Internal Revenue of the
18 United States, or the revenue officer of any other state imposing
19 any of the taxes imposed in this Subchapter, or the duly
20 authorized representative of either, to inspect the report or
21 return of any taxpayer; or may furnish that person an abstract of
22 the report or return of any taxpayer; or supply that person with
23 information concerning any item contained in any report or
24 return, or disclosed by the report of any investigation of any
25 report or return of any taxpayer. The permission, however, may
26 be granted or the information furnished to the officer or agent
27 only if the statutes of the United States or of the other state
28 grant substantially similar privilege to the Secretary of Revenue
29 of this State or the Secretary's duly authorized representative.
30 Notwithstanding any other provision of law, the Secretary may
31 also furnish names, addresses, and account and identification
32 numbers of (i) taxpayers who may be entitled to property held in
33 the Escheat Fund to the Department of State Treasurer when that
34 Department requests the information for the purpose of
35 administering Chapter 116B of the General Statutes, and (ii)
36 taxpayers to the Employment Security Commission when that
37 Commission requests the information for the purpose of
38 administering Article 2 of Chapter 96 of the General Statutes.
39 Neither this section nor any other law prevents the exchange of
40 information between the Department of Revenue and the Department
41 of Transportation's Division of Motor Vehicles when the
42 information is needed by either to administer the laws with which
43 they are charged. Notwithstanding any other provision of law,
44 State officers and employees who perform computerized data

1 processing functions pursuant to G.S. 143-341(9) for the
2 Department of Revenue are authorized to receive and process for
3 the Department of Revenue information in reports and returns and
4 are subject to the criminal provisions of this section.

5 Notwithstanding the provisions of this section, the Secretary
6 of Revenue may contract with any person, firm or corporation to
7 receive and address, sort, bag, or deliver to the United States
8 Postal Service any bulk mailing originated by the Department of
9 Revenue, and may deliver the mail to the contractor pursuant to
10 the contract. To ensure performance of the contract, the
11 contractor shall furnish a bond in a form and amount acceptable
12 to the Secretary.

13 Notwithstanding the provisions of this section, the Secretary
14 of Revenue may contract with a financial institution for the
15 receipt of withheld income tax payments under G.S. 105-163.6."

16 Sec. 13. G.S. 105-266 reads as rewritten:

17 "**§ 105-266. Overpayment of taxes to be refunded with interest.**

18 If the Secretary of Revenue discovers from the examination of
19 any return, or otherwise, that any taxpayer has overpaid the
20 correct amount of tax (including penalties, interest and costs if
21 any), that overpayment if the amount of three dollars (\$3.00) or
22 more, shall be refunded to the taxpayer within 60 days after it
23 is ascertained together with interest at the rate established in
24 G.S. 105-241.1(i) for assessments; provided, that interest on the
25 refund shall be computed from a date 90 days after the date the
26 tax was originally paid by the taxpayer; except that there shall
27 be no refund to the taxpayer of any sum set off under the
28 provisions of Chapter 105A, the Set-off Debt Collection Act. If
29 the overpayment is less than three dollars (\$3.00) the
30 overpayment shall be refunded only upon receipt by the Secretary
31 of Revenue of a written demand for the refund from the taxpayer.
32 Provided, however, that no overpayment shall be refunded
33 irrespective of whether upon discovery or receipt of written
34 demand if the discovery is not made or the demand is not received
35 within three years from the date set by the statute for the
36 filing of the return or within six months of the payment of the
37 tax alleged to be an overpayment, whichever date is the later.
38 The provisions of this paragraph shall not apply to interest
39 required under G.S. 105-267. When a husband and wife have
40 ~~electd under G.S. 105-152.1 to file~~ filed a joint return under
41 G.S. 105-152 and a refund for overpayment of tax is made payable
42 to both spouses as provided in that subsection, the provisions of
43 this section shall apply to the refund."

1 Sec. 14. This act is effective for taxable years
2 beginning on or after January 1, 1991.

Explanation of Proposal 9

Legislative Proposal 9 would provide that a nonresident married couple may file a joint income tax return even if only one spouse has income in North Carolina. North Carolina has allowed married couples to file joint returns since the Tax Fairness Act was enacted in 1989. In order to file a joint State return, the couple must file a joint federal return and both spouses must either be residents or have income taxable to North Carolina. Virginia imposes the same requirement for joint filing but South Carolina and Georgia allow a nonresident joint return where only one spouse has income in the state.

The Study Committee received complaints from South Carolina residents that the joint filing requirements are unfair because they do not allow nonresidents the tax benefit that residents receive from filing jointly. Taxpayers pointed out that allowing joint filing would not lead to double exemptions or deductions because of the rules requiring apportionment of income and credit for taxes paid to another State. In addition, in May 1990, the South Carolina General Assembly enacted a new law stating that beginning in 1991 it would no longer allow nonresident joint filing for residents of States that do not allow joint filing for South Carolina residents. This retaliatory legislation was apparently designed to pressure North Carolina to change its law.

The Study Committee adopted Legislative Proposal 9, which would require all nonresident couples with North Carolina income to file a joint State return if they file a joint federal return. A couple that files separate federal returns must also file separate State returns. This change will adopt the Georgia and South Carolina rule and repeal the Virginia rule disallowing joint filing for nonresident couples when only one spouse has income in the State. The act is to become effective for taxable years beginning on or after January 1, 1991.

Background Information:

Prior to the 1989 income tax year, the joint return filing option was not allowed on North Carolina returns. Under the 1989 income tax overhaul, joint returns were allowed in cases where both spouses were residents of North Carolina or have taxable income to the State. Concerns by residents of South Carolina who were not able to use the joint return option in filing a return on their North Carolina income led to the enactment of a South Carolina tax law not allowing the joint return for North Carolina residents owing taxes to South Carolina (or any state not allowing joint returns for South Carolina residents).

Explanation of Proposal:

Allows all nonresident couples with North Carolina income to file a joint return.

Effective Date:

Tax years beginning on or after January 1, 1991.

Fiscal Effect:

Minimal reduction in General Fund tax revenue.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 10 (91-LC-006(8.24))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Child Care Credit/Nonresidents. (Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING NONRESIDENT TAXPAYERS TO CLAIM THE TAX CREDIT
FOR CHILD CARE AND CERTAIN EMPLOYMENT-RELATED EXPENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.11 reads as rewritten:

"§ 105-151.11. Credit for child care and certain employment-
related expenses.

(a) A person who is allowed a credit against federal income
tax for a percentage of employment-related expenses under section
21 of the Code shall be allowed as a credit against the tax
imposed by this Division an amount equal to the applicable
percentage of the employment-related expenses as defined in
section 21(b)(2) of the Code. For employment-related expenses
that are incurred only with respect to one or more dependents who
are seven years old or older and are not physically or mentally
incapable of caring for themselves, the applicable percentage is
seven percent (7%). For employment-related expenses with respect
to any other qualifying individual, the applicable percentage is
ten percent (10%).

(b) The amount of employment-related expenses for which a
credit may be claimed may not exceed two thousand four hundred
dollars (\$2,400) if the taxpayer's household includes one
qualifying individual, as defined in section 21(b)(1) of the
Code, and may not exceed four thousand eight hundred dollars

1 (\$4,800) if the taxpayer's household includes more than one
2 qualifying individual.

3 (c) No credit shall be allowed under this section unless the
4 taxpayer completes and attaches to the tax return the necessary
5 form or forms as may be required by the Secretary. No credit
6 shall be allowed under this section for amounts deducted from
7 gross income in calculating taxable income under the Code.

8 (d) A nonresident or part-year resident who claims the credit
9 allowed by this section shall reduce the amount of the credit by
10 multiplying it by the fraction calculated under G.S. 105-134.5(b)
11 or (c), as appropriate. The credit allowed by this section may
12 not exceed the amount of tax imposed by this Division for the
13 taxable year reduced by the sum of all credits allowable under
14 this Division, except for payments of tax made by or on behalf of
15 the taxpayer.

16 ~~(e) No credit shall be allowed under this section with respect~~
17 ~~to employment-related expenses paid by a nonresident of this~~
18 ~~State."~~

19 Sec. 2. This act is effective for taxable years
20 beginning on or after January 1, 1991.

Explanation of Proposal 10

Legislative Proposal 10 would allow nonresidents to claim the income tax credit for child care and certain employment-related expenses. On July 9, 1981, the General Assembly repealed the income tax deduction for child care expenses and enacted in its place a tax credit for these expenses. At that time nonresidents were not allowed to take income tax deductions that were not directly connected to their North Carolina income. Thus, in changing the child care deduction to a credit, the General Assembly retained the provision that nonresidents could not take advantage of the tax benefit.

A few months later, however, the General Assembly abandoned its policy of disallowing nonresidents' deductions for expenses unrelated to North Carolina income and enacted a new law allowing a nonresident to take a proportional amount of such deductions. Through an oversight, the restriction that had been carried forward from the child care deduction to the child care credit was not similarly modified. This restriction has remained in the law. Legislative Proposal 10 would revise the law to allow nonresidents to claim a proportional amount of the credit for child care and certain employment-related expenses. The bill would be effective for taxable years beginning on or after January 1, 1991.

Background Information:

In 1981 the General Assembly converted the state income tax deduction for child care expenses to a tax credit. In the same session, the law denying nonresidents itemized tax deduction not directly connected to their North Carolina income was changed to allow a prorated deduction, depending on the proportion of total income earned in North Carolina. Since the child care deduction had been converted to a credit, the nonresident deduction allowance did not apply to child care expenses.

Explanation of Proposal:

Allow nonresident taxpayers to claim a prorated child care tax credit under the income tax, based on the proportion of total income earned in the State.

Effective Date:

Tax years beginning on or after January 1, 1991.

Fiscal Effect:

Minimal reduction in General Fund tax revenue.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 11 (91-LC-011(9.1))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Subchapter S Clarification.

(Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY SUBCHAPTER S CORPORATION LOSS CARRYFORWARDS.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 105-131.4(e) reads as rewritten:
5 "(e) Each shareholder's pro rata share of the reduction of an
6 S Corporation's income because of the allowance of a carryforward
7 loss to the S Corporation under this subsection shall be taken
8 into account by the shareholder as a transitional adjustment
9 under G.S. 105-134.7. Notwithstanding the provisions of
10 subsection (a) of this section, an S Corporation that sustained a
11 net economic loss in a taxable year beginning before January 1,
12 1989, may carry the loss forward to a taxable year beginning on
13 or after January 1, 1989, and before July 1, 1991, and may deduct
14 the loss in ~~that~~ each year to one-half of the extent it could
15 have carried forward and deducted the loss pursuant to G.S.
16 105-130.5(b)(4) and G.S. 105-130.8 if the S Corporation Income
17 Tax Act had not become effective until taxable years beginning on
18 or after July 1, 1991. Any loss carryforward allowed as a
19 deduction by this subsection may not exceed one-half of the S
20 Corporation's net income, as defined in the Code subject to the
21 adjustments provided in G.S. 105-130.5 other than the adjustment
22 provided in G.S. 105-130.5(b)(4), and is subject to the
23 limitations provided in G.S. 105-131.4(b) and (d).
24 Notwithstanding the provisions of G.S. 105-130.8(4), a net

1 economic loss carried forward to a 1990 or 1991 taxable year
2 pursuant to this subsection is not applied to or offset by that
3 part of the net income of a preceding tax year from which the
4 loss was not deductible solely due to the 'one-half' limitations
5 provided in this subsection. Notwithstanding the provisions of
6 G.S. 105-131.3, the basis of a shareholder in the stock of an S
7 Corporation shall be adjusted for the shareholder's pro rata
8 share of the carryforward loss allowed as a deduction to the S
9 Corporation under this subsection. Notwithstanding the
10 provisions of G.S. 105-131.6(c)(2), the accumulated adjustments
11 account maintained for each resident shareholder shall be
12 adjusted for the shareholder's pro rata share of the carryforward
13 loss allowed as a deduction to the S Corporation under this
14 subsection."

15 Sec. 2. This act is effective retroactively for taxable
16 years beginning on or after January 1, 1989, and expires for
17 taxable years beginning on or after July 1, 1991.

Explanation of Proposal 11

The Revenue Laws Study Committee recommended to the 1990 Session of the 1989 General Assembly that Subchapter S Corporations be allowed to carry pre-1989 net economic losses forward for two years. This recommendation was modified by the General Assembly and, as enacted, allowed carryforwards for three years but only to one-half of the extent they would have been allowed if the corporation were not an S Corporation. Legislative Proposal 11 would clarify that the limitation to one-half of the amount otherwise allowable applies separately to each of the years to which losses may be carried forward and is not an aggregate limit to one-half of the total pre-1989 net economic losses.

Background Information:

The 1988 General Assembly enacted legislation requiring federal S Corporations (less than 35 shareholders) to file under S Corporation rules for state tax purposes, beginning with tax years starting on or after July 1, 1990 (1991 tax year for most corporations). During the 1989 overhaul of the personal income tax, the effective date of the S corporation filing was accelerated to the 1989 tax year. Due to the loss of the two-year planning period for adjustment to the S Corp rules, some corporations who had accumulated loss carryforwards for corporate tax purposes were no longer able to use those losses.

The 1990 session of the General Assembly corrected this problem by adopting a transition rule that would allow the use of one-half of the pre-1989 accumulated loss carryforwards for three tax years after 1988. However, it is not clear from the language of the 1990 bill whether the one-half limitation applies to the total losses accumulated prior to 1989, or the accumulated losses that would be used each year.

Explanation of Proposal:

Clarifies 1990 session transition rule on S Corporation loss carryforwards by stating that one-half limitation applies separately to each year in which losses may be carried forward.

Effective Date:

Effective for tax years beginning on or after January 1, 1989 but ending before July 1, 1991.

Fiscal Effect:

The \$2.7 million negative impact on General Fund tax revenue has been accounted for in preparing the 1990-91 revised budget and will be accounted for in the revenue estimates of 1991-93 biennium revenues.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 12 (91-LCX-014(9.28))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Tax Credit Adjustment.

(Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE A TAXPAYER'S DEDUCTION FOR CERTAIN
CONTRIBUTIONS OF LAND OR CROPS TO ACCOUNT FOR TAX CREDITS
ALLOWED FOR THE SAME CONTRIBUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. The following additions to taxable income
shall be made in calculating North Carolina taxable income, to
the extent each item is not included in gross income:

(1) Interest upon the obligations of states, other than
this State, and their political subdivisions.

(2) Any amount allowed as a deduction from gross income
under the Code that is taxed under the Code by a
separate tax other than the tax imposed in section
1 of the Code. The Secretary shall report to the
1991 General Assembly all provisions under the Code
for taxing certain amounts separately and shall
recommend whether those amounts should be taxed
separately under this Division or should be added
to taxable income in calculating North Carolina
taxable income.

(3) Any amount deducted from gross income under section
164 of the Code as State, local, or foreign income
tax to the extent that the taxpayer's total

itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased under section 63(c)(4) of the Code and the amount by which the taxpayer's personal exemptions have been increased under section 151(d)(3) of the Code.

(5) The fair market value, up to a maximum of one hundred thousand dollars (\$100,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14."

Sec. 2. G.S. 105-151.12 reads as rewritten:

"§ 105-151.12. Credit for certain real property donations.

(a) A person who makes a qualified donation of interests in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes, shall be allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions under the Code; provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances are not eligible for this credit. The credit allowed under this section may not exceed twenty-five thousand dollars (\$25,000). To support the credit allowed by this section, the taxpayer shall file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment, Health, and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth by this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

~~(c) No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code.~~ In order to claim the credit allowed under this section, the taxpayer must add the fair market value of the donated property interest, up to a maximum of one hundred thousand dollars (\$100,000), to taxable income as provided in G.S. 105-134.6(c).

(d) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section.

(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before 31 December 1994 to qualify for the credit allowed by this section."

Sec. 3. G.S. 105-151.14 reads as rewritten:

"§ 105-151.14. Credit for gleaned crop.

(a) A person who grows a crop and permits the gleaning of the crop shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except tax payments made by or on behalf of the taxpayer. ~~No credit is allowed under this section for amounts that were deducted from gross income in calculating taxable income under the Code.~~ In order to claim the credit allowed under this section, the taxpayer must add the market price of the gleaned crop to taxable income as provided in G.S. 105-134.6(c). Any unused portion of the credit may be carried forward for the next succeeding five years.

(b) The following definitions apply to this section:

(1) 'Gleaning' means the harvesting of a crop that has been donated by the grower to a nonprofit organization which will distribute the crop to

1 individuals or other nonprofit organizations it
2 considers appropriate recipients of the food.

3 (2) 'Market price' means the season average price of
4 the crop as determined by the North Carolina Crop
5 and Livestock Reporting Service in the Department
6 of Agriculture, or the average price of the crop in
7 the nearest local market for the month in which the
8 crop is gleaned if the Crop and Livestock Reporting
9 Service does not determine the season average price
10 for that crop.

11 (3) 'Nonprofit organization' means an organization to
12 which charitable contributions are deductible from
13 gross income under the Code."

14 Sec. 4. G.S. 105-151.12(d) reads as rewritten:

15 "(d) In the case of property owned by ~~the entirety~~, a married
16 couple, where both spouses are required to file North Carolina
17 income tax returns, the credit allowed by this section may be
18 claimed only if the spouses file a joint return under G.S.
19 105-152.1. Where only one spouse is required to file a North
20 Carolina income tax return, that spouse may claim the credit
21 allowed by this section."

22 Sec. 5. Section 4 of this act is effective for taxable
23 years beginning on or after January 1, 1991. The remainder of
24 this act is effective retroactively for taxable years beginning
25 on or after January 1, 1989.

Explanation of Proposal 12

Legislative Proposal 12 makes an adjustment to two individual income tax credit laws to restore to taxpayers the benefits of the credits which were inadvertently limited by the Tax Fairness Act of 1989. G.S. 105-151.12 allows a tax credit of 25% of the value of property donated for land conservation purposes. The maximum credit for a donation of property is \$25,000. G.S. 105-151.14 allows a tax credit of 10% of the market price of a crop that the owner allows to be gleaned. "Gleaning" means harvesting a crop donated by the owner to a nonprofit organization for distribution. When these tax credits were enacted in 1983 and 1984, respectively, they provided that the taxpayer could not also claim a deduction for the donation that was the basis of the credit. In effect, the taxpayer could choose between taking a credit or a deduction for State tax purposes. When the Tax Fairness Act of 1989 provided that federal taxable income would be used as the starting point for calculating State taxable income, it eliminated separate State tax deductions. The deductions taken for federal purposes apply to the State tax as well. At the same time, the State tax credits were amended to provide that they could not be taken for amounts that were deducted for federal tax purposes.

Although the intent of the law remained the same, to prohibit a double tax benefit for the same donation, the effect of the revision was to restrict the situations in which the tax credit could be used. Under the original law, the taxpayer could choose between the State credit and the State deduction; because the credit provided a greater tax benefit, the taxpayer would normally choose the credit. Under the revised law, the taxpayer had to forgo both the State and federal deductions to receive the credit. This removed the extra incentive for making the donation in the first place. Representatives of the Department of Environment, Health, and Natural Resources stated that these law changes were hampering the Department's efforts to encourage donations of land for conservation purposes.

The Study Committee decided that the law should be amended to reflect its original intent: a taxpayer can choose either the State credit or the State deduction. Claiming the State credit should not affect the federal deduction. Legislative Proposal 12 provides that a taxpayer who claims the State credit must forgo the benefit of the

deduction for State tax purposes. If the deduction has already been claimed in determining federal taxable income, the taxpayer must add the amount of the deduction to North Carolina taxable income.

The Study Committee also decided to make an adjustment to the tax credit for donations of property for land conservation, as it relates to married couples. Under current law, a married couple that owns property by the entirety may take only one credit for a donation of the property. However, if the couple has a tenancy in common, each spouse may take a separate credit. Section 4 of Proposal 12 provides that only one credit is allowed for property owned by a married couple, regardless of the nature of the ownership interest.

Section 4 of the bill is to become effective beginning with the 1991 tax year. The rest of the bill would be effective retroactively beginning with the 1989 tax year.

Proposal 12
Short Title: Tax Credit Adjustment

Explanation of Bill

An individual donating real property to the State for land conservation or donating the harvest of a crop to a nonprofit organization may not receive a credit on the State income tax return if they deducted the value of the donation under the federal income tax code.

The proposed act allows taxpayers to continue to take a federal deduction and a State credit. In order to receive the tax credit a taxpayer donating real property must add 100% of the fair market value of the donated property, not to exceed \$100,000, to the taxpayers federal taxable income when calculating State taxable income for a taxable year. To receive a credit for donating the harvest of a crop, a taxpayer must add the market price of the crop to the taxpayer's federal taxable income when calculating State taxable income for a taxable year.

Individuals donating real property for land conservation purposes are allowed a credit of 25% of the fair market value not to exceed \$25,000. Individuals donating the harvest of a crop to a nonprofit organization are allowed a credit of 10% of the market price of the crop.

Effective Date

This act is effective for taxable years beginning on or after January 1, 1991.

Fiscal Effect

The average annual loss to individual income tax revenue for the seven-year period these credits have been in effect is \$145,000. The total revenue loss to the General Fund, from individual income tax credits as amended by this proposal, for Fiscal Years 1991-92, 1992-93, 1993-94, and 1994-95 is expected to be at least \$100,000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

PROPOSAL 13 (91-LCX-015(9.15))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Repeal Franchise Tax Initial Return. (Public)

Sponsors: Representatives Lilley; Abernethy, Brawley, Hasty.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE FRANCHISE TAX INITIAL RETURN AND TO
INCREASE THE MINIMUM FRANCHISE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-123 is repealed.

Sec. 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital
stock, surplus and undivided profits as set out in subsection (c)
of this section, which amount so determined shall in no case be
less than fifty-five percent (55%) of the appraised value as
determined for ad valorem taxation of all the real and tangible
personal property in this State of each such corporation plus the
total appraised value of intangible property returned for
taxation of intangible personal property as herein specified nor
less than its total actual investment in tangible property in
this State, every corporation taxed under this section shall
annually pay to the Secretary of Revenue, at the time the report
and statement are due, a franchise or privilege tax, which is
hereby levied at the rate of one dollar and fifty cents (\$1.50)
per one thousand dollars (\$1,000) of the total amount of capital
stock, surplus and undivided profits as herein provided. The tax
imposed in this section shall in no case be less than ~~twenty-five~~
~~dollars (\$25.00)~~ thirty-five dollars (\$35.00) and shall be for
the privilege of carrying on, doing business, and/or the

1 continuance of articles of incorporation or domestication of each
2 such corporation in this State. Appraised value of tangible
3 property including real estate shall be the ad valorem valuation
4 for the calendar year next preceding the due date of the
5 franchise tax return. Appraised value of intangible property
6 shall be the total gross valuation required to be reported for
7 intangible tax purposes on April 15 coincident with or next
8 preceding the due date of the franchise tax return. The term
9 'total actual investment in tangible property' as used in this
10 section shall be construed to mean the total original purchase
11 price or consideration to the reporting taxpayer of its tangible
12 properties, including real estate, in this State plus additions
13 and improvements thereto less reserve for depreciation as
14 permitted for income tax purposes, and also less any indebtedness
15 incurred and existing by virtue of the purchase of any real
16 estate and any permanent improvements made thereon. In computing
17 'total actual investment in tangible personal property' there
18 shall also be deducted reserves for the entire cost of any air-
19 cleaning device or sewage or waste treatment plant, including
20 waste lagoons, and pollution abatement equipment purchased or
21 constructed and installed which reduces the amount of air or
22 water pollution resulting from the emission of air contaminants
23 or the discharge of sewage and industrial wastes or other
24 polluting materials or substances into the outdoor atmosphere or
25 into streams, lakes, or rivers, upon condition that the
26 corporation claiming such deduction shall furnish to the
27 Secretary a certificate from the Department of Environment,
28 Health, and Natural Resources or from a local air pollution
29 control program for air-cleaning devices located in an area where
30 the Environmental Management Commission has certified a local air
31 pollution control program pursuant to G.S. 143-215.112 certifying
32 that said Department or local air pollution control program has
33 found as a fact that the air-cleaning device, waste treatment
34 plant or pollution abatement equipment purchased or constructed
35 and installed as above described has actually been constructed
36 and installed and that such device, plant or equipment complies
37 with the requirements of the Environmental Management Commission
38 or local air pollution control program with respect to such
39 devices, plants or equipment, that such device, plant or
40 equipment is being effectively operated in accordance with the
41 terms and conditions set forth in the permit, certificate of
42 approval, or other document of approval issued by the
43 Environmental Management Commission or local air pollution
44 control program and that the primary purpose thereof is to reduce

1 air or water pollution resulting from the emission of air
2 contaminants or the discharge of sewage and waste and not merely
3 incidental to other purposes and functions. The cost of
4 constructing facilities of any private or public utility built
5 for the purpose of providing sewer service to residential and
6 outlying areas shall be treated as deductible for the purposes of
7 this section; the deductible liability allowed by this section
8 shall apply only with respect to such pollution abatement plants
9 or equipment constructed or installed on or after January 1,
10 1955.

11 In determining the total tax payable by any corporation under
12 this section, there shall be allowed as a credit on such tax the
13 amount of the credit authorized by Division V of Article 4 of
14 this Chapter."

15 Sec. 3. This act is effective for taxable years
16 beginning on or after September 1, 1991.

Explanation of Proposal 13

Legislative Proposal 13 would repeal the statute that requires an initial franchise tax return and would increase the minimum annual corporate franchise tax from \$25.00 to \$35.00. Corporations pay franchise tax annually based on the value at the end of the tax year of the largest of (i) capital stock plus surplus and undivided profits apportioned to North Carolina, (ii) 55% of the value of real and tangible personal property in North Carolina plus the value of intangibles, or (iii) the net book value of real and tangible personal property in North Carolina. The tax is at the rate of \$1.50 for every \$1,000 of value, with a minimum tax of \$25.00. In addition, whenever a new corporation is incorporated or begins doing business in this State, it is required to file an initial return within 60 days and pay a tax of \$25.00 for the period from the date of incorporating or beginning business until the end of the first income year. If a corporation fails to file the initial return and pay the \$25.00 tax, its charter or certificate of authority is suspended, even if it files its subsequent annual returns.

Section 1 of the bill repeals the requirement that a new corporation file an initial return and pay the initial tax, as requested by the Department of Revenue. The Department reported that 30% of corporate suspensions are a result of failing to file this return. Corporations that file their subsequent annual returns may learn of the initial return requirement only after having their charters suspended. This situation causes an administrative burden for the Department of Revenue and the Department of Secretary of State and is inconvenient for taxpayers. The Department of Revenue reported that its operation would not be hampered by repeal of the initial return requirement because G.S. 55-16-12 requires corporations other than professional corporations to file an initial report with the Secretary of State within 60 days after the end of the month in which they first incorporate or begin doing business. The Department of Revenue can obtain whatever information it needs regarding these corporations from the Secretary of State and can obtain information about professional corporations from the licensing boards that govern the professions.

Repeal of the initial return and tax would result in a revenue loss to the State. Section 2 of the bill increases the minimum corporate franchise tax from \$25.00 to \$35.00. This increase would generate revenue to offset the revenue lost by the initial return repeal.

Section 3 of the bill provides that it is effective for tax years beginning on or after September 1, 1991.

Proposal 13
Short Title: Repeal Franchise Tax Initial Return.

Explanation of Bill

Newly incorporated and domesticated corporations and undomesticated corporations commencing business in North Carolina are required to file an initial franchise tax return within 60 days after incorporation, domestication or commencement of business in North Carolina, whichever is earlier. The initial tax in all cases is \$25.00, and payment must accompany the return. Proposal 13 would repeal the initial franchise tax return.

Seventy-five days following the close of a corporation's first income year, it is required to file its first combined franchise and income tax return. The corporation franchise tax is determined by applying the tax rate of \$1.50 per \$1000.00 to the largest of three bases. The bases are: (1) capital stock, surplus and undivided profits, (2) investment in tangible property in North Carolina, and (3) fifty-five percent of the appraised value of property plus the total taxable amounts of all intangible property in North Carolina. If the dollar value of the largest of these three does not exceed \$25.00 then the corporation pays \$25.00 for the franchise tax return. Proposal 13 increases this \$25.00 minimum tax to \$35.00. The franchise tax payable with the annual return is in advance and for the privilege of doing business and existing as a corporation in North Carolina.

Effective Date

This act becomes effective for tax years beginning on or after September 1, 1991.

Fiscal Effect

The revenue impact on the general fund from eliminating the \$25.00 initial franchise tax is estimated to be an annual loss of \$375,000.

The revenue impact on the general fund from increasing the minimum franchise tax to \$35.00 is estimated to be an annual gain of \$400,000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

PROPOSAL 14 (91-LJX-2)
THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Simplify Soft Drink Tax.

(Public)

Sponsors: Reps. Lilley, Abernethy, Hasty.

Referred to:

January 30, 1991

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE ADMINISTRATION OF THE EXCISE TAX ON SOFT DRINKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.44 reads as rewritten:

"§ 105-113.44. Definitions.

~~As used in this Article, unless the context otherwise requires:~~

The following definitions apply in this Article:

(1) ~~Base products' means hot chocolate flavored drink mix, flavored milk shake bases, concentrate products to which milk or other liquid is added to complete a soft drink, and all like items or products as herein defined which will be taxed as syrups.~~ product. The compound mixture or basic ingredients to which liquid milk or another liquid is added to complete a soft drink. The term includes a powder, a simple syrup, a chocolate syrup, other syrups, and a concentrate.

(2) ~~'Bottled' means enclosed in any closed or sealed glass, metal, paper or other type of bottle, can, carton or container, regardless of the size of such~~

1 ~~container.~~ Bottled. In a closed container of any
2 kind.

3 (3) ~~'Soft drink' means any complete, finished,~~
4 ~~ready-to-use, nonalcoholic drink, whether~~
5 ~~carbonated or not, such as soda water, ginger ale,~~
6 ~~Nu-Grape, Coca-Cola, lime-cola, Pepsi-Cola,~~
7 ~~bud-wine, near beer, fruit juice, vegetable juice,~~
8 ~~milk drinks when any flavoring or syrup is added,~~
9 ~~cider, carbonated water and all preparations~~
10 ~~commonly referred to as soft drinks of whatever~~
11 ~~kind or description.~~

12 (4) ~~'Secretary' means the North Carolina Secretary of~~
13 ~~Revenue.~~

14 (5) ~~'Crowns' means crowns, caps and lids bearing any~~
15 ~~tax indicia other than stamps evidencing the~~
16 ~~payment of the excise tax levied under this~~
17 ~~Article. 'Crowns' shall also include waxed paper or~~
18 ~~plastic containers used by dairies upon which the~~
19 ~~tax indicia has been imprinted by the manufacturer~~
20 ~~thereof.~~

21 (6) ~~'Distributor' includes any person who manufactures,~~
22 ~~bottles, compounds, mixes or purchases for sale to~~
23 ~~retail dealers or wholesale dealers any bottled~~
24 ~~soft drink, soft drink syrup or powder, or base~~
25 ~~product for mixing, making or compounding soft~~
26 ~~drinks. Distributor. A person who makes bottled~~
27 ~~soft drinks or base products or who acquires~~
28 ~~bottled soft drinks or base products for sale to a~~
29 ~~wholesale dealer or a retail dealer.~~

30 (7) ~~'Excise tax' means the soft drink tax levied under~~
31 ~~G.S. 105-113.45. Juice. Any of the following:~~

32 a. The liquid that results from pressing fresh
33 fruit or fresh vegetables.

34 b. The concentrate produced by dehydrating a
35 liquid described in subpart a.

36 c. The liquid that results from adding water to a
37 concentrate described in subpart b.

38 (8) ~~'In this State' or 'within this State' means within~~
39 ~~the exterior limits of the State of North Carolina~~
40 ~~and includes all territory within such limits owned~~
41 ~~by, leased by or ceded to the United States of~~
42 ~~America. Milk. Any of the following:~~

43 a. Liquid milk, regardless of butterfat content.

- b. The powder produced by dehydrating liquid milk.
- c. The liquid that results from adding water to dehydrated liquid milk.
- (9) 'Natural fruit juice' means the natural liquid which results from the pressing of sound ripe fruit, and the liquid which results from the reconstitution of natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice. Natural. Without added ingredients of any kind other than vitamins. Added ingredients include sugar, salt, preservatives, artificial flavoring, coloring, and carbonation.
- (10) 'Natural liquid milk' means natural liquid milk regardless of butterfat content, and the liquid milk product which results from the reconstitution of natural milk concentrate, regardless of butterfat content, by the restoration of water to dehydrated or evaporated natural milk.
- (11) 'Natural vegetable juice' means the natural liquid which results from the pressing of sound ripe vegetables or the liquid which results from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice.
- (12) 'Person' includes any Person. An individual, a firm, a partnership, joint venture, an association, a corporation, estate, trust, receiver, syndicate or any other organization or group or combination acting as a unit, the State or any of its political subdivisions, and the plural as well as the singular number. unit.
- (13) 'Powders' means compressed powders, crystals, granules or tablets from which soft drinks can be made. Powder. Crystals, granules, tablets, and other dry products.
- (14) Retail dealer' includes every person, other than a distributor or wholesale dealer, who makes, mixes, compounds or manufactures any drink from a soft drink syrup or powder or base product, and sells or otherwise dispenses the same to the ultimate consumer, and every person, other than a distributor or wholesale dealer, who sells or otherwise dispenses any bottled soft drink to the

- ultimate consumer. dealer. A person who sells bottled soft drinks or base products to the ultimate consumer or who makes soft drinks from base products and sells the soft drinks to the ultimate consumer.
- (15) 'Selling' or 'sale' means any sale, transfer, exchange, barter, gift or offer for sale and distribution, in any manner or by any means whatsoever. Sale. A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.
- (16) 'Simple syrup' means the product resulting from the making, mixing, compounding or manufacturing by dissolving sugar and water or any other mixture that will create syrup to which may be added concentrates or extracts. Secretary. The Secretary of Revenue.
- (17) 'Soda fountain' includes all places where soft drinks are compounded for sale, including automatic vending machines. Soft drink. A beverage that is not an alcoholic beverage, as defined in G.S. 105-113.68.
- (18) 'Soft drink syrups and powders' includes the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit juice, milk or any other product suitable to make soft drinks, among such syrups being such products as Coca-Cola syrup, Chero-Cola syrup, Pepsi-Cola syrup, Dr. Pepper syrup, root beer syrup, Nu-Grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purpose of domestically mixing soft drinks such as kool-aid, oh boy drink, tip-top, miracle aid and all other similar products. Concentrated natural frozen or unfrozen fruit juices or vegetable juices when used

domestically are specifically excluded from this definition.

(19) 'Stamp' means the North Carolina taxpaid stamp evidencing the payment of the excise tax levied by this Article, and which may be used as permitted by the Secretary in lieu of taxpaid crowns.

(20) Wholesale dealer' includes any person who sells bottled soft drinks, soft drink syrups or powders, or base products for mixing, compounding or making soft drinks to retail dealers or other wholesale dealers for resale purposes. dealer. A person who sells bottled soft drinks or base products to another for resale."

Sec. 2. G.S. 105-113.45 reads as rewritten:

"§ 105-113.45. Taxation rate. Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks.-- A soft drink excise tax is hereby levied and imposed on and after midnight, September 30, 1969, upon the sale, use, handling and distribution of all soft drinks, soft drink syrups and powders, base products and other items referred to in this section. An excise tax of one cent (1¢) is levied on each bottled soft drink.

(b) The rate of tax on each bottled soft drink shall be one cent (1¢).

(c) Liquid Base Products.-- The rate of tax on each gallon of soft drink syrup or simple syrup shall be one dollar (\$1.00), and on a fraction of a gallon the rate shall be an amount which represents one dollar (\$1.00) multiplied by the same fraction of a gallon. The rate of a tax on each ounce or fraction of an ounce of soft drink syrup or simple syrup shall be four fifths of a cent (4/5¢), and no exemption or refund shall be allowed on such syrup even though it may subsequently be diverted to some purpose other than the making of soft drinks. An excise tax of one dollar (\$1.00) a gallon, or four-fifths cents (4/5¢) an ounce or fraction of an ounce, is levied on a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

(d) Dry Base Products.-- The rate of tax on dry soft drink powders and base products which are used to make soft drinks without being converted into syrup shall be one cent (1¢) per ounce or fraction thereof of the dry powder or base product weight. However, the tax on dry soft drink powder or base product which is to be converted into syrup shall be the same as that

~~1 which would be due upon the syrup produced, if the syrup were~~
~~2 being taxed according to the rates set out in subsection (c)~~
~~3 above. An excise tax is levied on a dry base product at the~~
~~4 rate:~~

~~(1) Of one cent (1¢) an ounce or fraction of an ounce~~
~~if the dry base product is not converted into a~~
~~syrup or other liquid base product before it is~~
~~used to make a soft drink.~~

~~(2) That would apply under subsection (c) to the~~
~~resulting liquid base product if the dry base~~
~~product is converted into a liquid base product~~
~~before it is used to make a soft drink.~~

~~(e) The excise tax herein levied on syrups, powders and base~~
~~products shall not apply to syrups, powders and base products~~
~~used by persons in the manufacture of bottled soft drinks which~~
~~are otherwise subject to tax under this Article. The Secretary~~
~~may by administrative rules or regulation, provide for the~~
~~storage of such syrups, powders and base products when they are~~
~~not for use in the manufacture of bottled soft drinks."~~

Sec. 3. G.S. 105-113.46 reads as rewritten:

~~"§ 105-113.46. Exemption of certain milk drinks. Exemptions.~~

~~The taxes imposed by this Article do not apply to an item that~~
~~is listed in this section and, if the item is a bottled soft~~
~~drink or a juice concentrate included in subdivisions (1), (2),~~
~~or (3), is registered with the Secretary in accordance with G.S.~~
~~105-113.47:~~

~~(1) Natural juice.~~

~~(2) Natural milk.~~

~~(3) A bottled soft drink or base product that contains~~
~~at least seventy percent (70%) milk measured by~~
~~volume.~~

~~(4) Natural water.~~

~~(5) A base product used to make a bottled soft drink~~
~~subject to tax under this Article.~~

~~(6) Coffee or tea in any form.~~

~~(7) A bottled soft drink or base product sold outside~~
~~the State.~~

~~(8) A bottled soft drink or base product sold to the~~
~~federal government.~~

~~All natural liquid milk drinks produced by farmers or dairies~~
~~shall be exempt from the payment of the soft drink excise tax.~~
~~Where a product other than the above is produced, such product is~~
~~subject to the tax unless otherwise exempt under this Article."~~

Sec. 4. G.S. 105-113.47 reads as rewritten:

~~1 "§ 105-113.47. Natural fruit or vegetable juice or natural liquid
2 milk drinks exempted from tax. Registration of certain exempt
3 bottled soft drinks and juice concentrates.~~

~~4 (a) Requirement.-- All bottled soft drinks containing
5 thirty-five percent (35%) or more of natural fruit or vegetable
6 juice and all bottled natural liquid milk drinks containing
7 thirty-five percent (35%) or more of natural liquid milk, are
8 exempt from the excise tax imposed by this Article, except that
9 this exemption shall not apply to any fruit or vegetable juice
10 drink to which has been added any coloring, artificial flavoring
11 or preservative. Sugar, salt or vitamins shall not be construed
12 to be an artificial flavor or preservative. To be exempt from the
13 tax imposed by this Article, a natural juice or natural milk
14 bottled soft drink or a natural juice concentrate must be
15 registered with the Secretary as an exempt item. To register an
16 item as exempt, the person who controls the brand name or formula
17 of the item must file an application for registration with the
18 Secretary on a form provided by the Secretary. An application
19 must include an affidavit stating the complete and itemized
20 formula by volume of the bottled soft drink or juice concentrate
21 that is the subject of the application.~~

~~22 (b) Determination.-- Any bottled soft drink for which
23 exemption is claimed under this section must be registered with
24 the Secretary. No bottled soft drink shall be entitled to the
25 exemption until registration has been accomplished by the filing
26 of an application for exemption on such form as may be prescribed
27 by the Secretary, which form shall include an affidavit setting
28 forth the complete and itemized formula by volume of the drink
29 therein referred to, and the failure to submit such affidavit
30 shall be prima facie evidence that such bottled soft drink is not
31 exempt. All bottled soft drinks which are not so registered and
32 do not have affixed thereto the proper stamps or crowns shall be
33 subject to confiscation. The Secretary or his duly authorized
34 representative may at any time check the formulas or the
35 manufacturing of such bottled soft drinks for which exemption is
36 claimed under this section and in addition thereto, the Secretary
37 or his duly authorized representative may at any time take
38 samples of any product for which exemption has been claimed, from
39 any and all persons offering such product for sale for the
40 purpose of ascertaining by analysis the contents thereof. The
41 sample shall be clearly marked for identification and such sample
42 may be turned over to any registered chemist designated by the
43 Secretary for the purpose of analysis. If such investigation
44 establishes that such bottled soft drink contains less than~~

1 ~~thirty-five percent (35%) by volume of natural fruit juice,~~
2 ~~natural vegetable juice or natural liquid milk, or if any person~~
3 ~~engaged in selling, manufacturing, purchasing, consigning, using,~~
4 ~~shipping or distributing for the purpose of sale within this~~
5 ~~State who has applied for an exemption hereunder fails or refuses~~
6 ~~to allow the Secretary or his duly authorized representative to~~
7 ~~check the formulas or inspect the manufacturing of such bottled~~
8 ~~soft drinks, the excise tax imposed by this Article shall apply~~
9 ~~to all sales of such products and all such products offered for~~
10 ~~sale and not properly stamped shall be subject to confiscation~~
11 ~~until such person permits the Secretary to examine the formulas~~
12 ~~or inspect the manufacturing of such bottled soft drinks. The~~
13 ~~Secretary shall determine whether a bottled soft drink or a juice~~
14 ~~concentrate for which an application for registration is filed~~
15 ~~meets the criteria for exemption. To make the determination, the~~
16 ~~Secretary or a representative of the Secretary may require the~~
17 ~~person who filed the registration application for the item or~~
18 ~~anyone who sells the item in this State to provide a sample of~~
19 ~~the item and may have the sample analyzed by a chemist to verify~~
20 ~~the accuracy of the submitted formula.~~

21 (c) No Disclosure.-- Except as required by law or allowed
22 under this subsection, in accordance with proper judicial order
23 or as otherwise provided by law, it shall be unlawful for the
24 Secretary or any deputy, agent, clerk or other officer or
25 employee or any other person acting in a confidential
26 relationship with an agent or employee of the Secretary to
27 divulge or make known in any manner any formula or any
28 particulars of any may not disclose part or all of the formula of
29 an item pertaining to any drink hereinabove referred to, for
30 which an application for registration is filed. However, such
31 prohibition shall not be construed to prohibit the publication of
32 whether or not such bottled soft drinks contain thirty-five
33 percent (35%) or more of natural fruit or vegetable juice or
34 thirty-five percent (35%) or more of natural liquid milk, nor
35 shall it be construed to prohibit the inspection by the Attorney
36 General or other legal representative of the State of the formula
37 of any taxpayer who shall bring action to set aside or review the
38 tax base thereon or against whom an action or proceeding has been
39 instituted to recover any tax imposed by this Article. The
40 Secretary may disclose whether an item meets the exemption
41 criteria and the Attorney General or other legal representative
42 of the State may examine the formula for an item if the grant or
43 denial of an exemption for the item is challenged.

~~(d) Effect.-- Where any product for which exemption is claimed under this section is found to contain less than thirty-five percent (35%) by volume of natural fruit juice, natural vegetable juice, or natural liquid milk, the excise tax imposed by this Article shall apply to all sales of such product, and all such products offered for sale and not properly stamped shall be subject to confiscation. Registration as an exempt item applies prospectively to sales of the registered bottled soft drink or registered juice concentrate made on or after the date of registration. Registration does not relieve a person of liability for taxes due on sales made before the date an item is registered."~~

Sec. 5. G.S. 105-113.50 reads as rewritten:

"§ 105-113.50. Soft drink licenses required.

(a) Distributors And Wholesale Dealers.-- Distributors and wholesale dealers shall obtain for each place of business a continuing soft drink license for which a fee of twenty-five dollars (\$25.00) shall be paid. For the purpose of this section, subsection, 'place of business' means any place where a distributor makes bottled soft drinks or base products are manufactured by a distributor, or any place where unstamped bottled soft drinks, soft drink syrups and powders, base products and other items taxed under this Article are received or stored by a distributor or wholesale dealer, a distributor or a wholesale dealer receives or stores non-tax-paid bottled soft drinks or non-tax-paid base products.

~~(b) Out-of-state distributors and wholesale dealers may obtain appropriate distributors' or wholesale dealers' licenses upon compliance with the provisions of this Article and such regulations and administrative rules as may be issued by the Secretary hereunder, for which a fee of twenty-five dollars (\$25.00) shall be paid for each such soft drink license.~~

(c) Retail Dealers.-- Each retail dealer manufacturing or purchasing not previously taxed syrups, powders or base products shall secure. Retail dealers shall obtain for each place of business a continuing soft drink license for which a fee of five dollars (\$5.00) shall be paid for each place of business at which such unstamped syrups, powders or base products are received or at which place such retail dealer manufactures them. paid. For the purpose of this subsection, 'place of business' means any place where a retail dealer receives non-tax-paid bottled soft drinks or non-tax-paid base products.

~~(d) Distributors, wholesale dealers and retail dealers licensed under this section shall file such reports with the Secretary as~~

~~1 he may require not later than the fifteenth day of each month
2 showing transactions for the preceding month."~~

3 Sec. 6. G.S. 105-113.50A reads as rewritten:

4 "§ 105-113.50A. Local taxation.

5 Except as authorized by G.S. 105-79, ~~no county, city or town~~
6 ~~shall levy any 105-102.5(e), a county or city may not levy a~~
7 ~~privilege license tax upon the business of bottling,~~
8 ~~manufacturing, producing, purchasing, selling at wholesale or~~
9 ~~retail, jobbing, consigning, using, shipping shipping, or~~
10 ~~distributing for the purpose of sale within this State bottled~~
11 ~~soft drinks in bottles or other closed containers. drinks or base~~
12 ~~products."~~

13 Sec. 7. G.S. 105-113.51 reads as rewritten:

14 "§ 105-113.51. Affixing of crowns and stamps to containers;
15 crowns and stamps not transferable. Liability for and payment of
16 excise taxes.

17 (a) ~~Any bottled soft drink offered for sale shall within 24~~
18 ~~hours of its manufacture or receipt in this State have affixed to~~
19 ~~it a North Carolina taxpaid stamp or a North Carolina taxpaid~~
20 ~~crown at the rate provided for in this Article, unless the tax~~
21 ~~has been or will be paid according to some other method available~~
22 ~~under the provisions of this Article.~~

23 (b) ~~The distributor or dealer who first distributes, sells,~~
24 ~~uses, consumes or handles bottled soft drinks, syrups, powders,~~
25 ~~base products and other items subject to the soft drink excise~~
26 ~~tax is subject to the tax unless taxpaid stamps or crowns have~~
27 ~~previously been affixed. The distributor, wholesale dealer or~~
28 ~~retail dealer, or any person who is the original consignee of any~~
29 ~~bottled soft drink, soft drink syrup, powder, base product or~~
30 ~~other item subject to the soft drink excise tax manufactured or~~
31 ~~produced outside this State, or who brings such into this State,~~
32 ~~shall pay the excise tax.~~

33 (c) ~~Taxpaid stamps shall be affixed to each individual~~
34 ~~container of soft drink syrups, powders, and base products by~~
35 ~~wholesale dealers or distributors within 48 hours after such~~
36 ~~syrups, powders, or base products are received or made by them~~
37 ~~and by retail dealers within 24 hours after such syrups, powders~~
38 ~~or base products are received by them, and in any event the~~
39 ~~containers must be stamped before such products are used in the~~
40 ~~preparation of soft drinks.~~

41 (d) ~~The payment of the excise tax provided for in this Article~~
42 ~~shall be evidenced by the affixing of taxpaid stamps or crowns to~~
43 ~~the original containers and the stamps and crowns provided for in~~

~~1 this Article shall not be transferable to any person other than
2 their original purchaser.~~

~~3 (e) Notwithstanding any other provision of this Article, the
4 excise tax levied upon powders, as herein defined, may be made
5 and evidenced in accordance with rules and regulations of the
6 Secretary.~~

7 (a) Primary Liability.-- The distributor, wholesale dealer,
8 or retail dealer who first distributes, sells, consumes, or
9 otherwise handles bottled soft drinks or base products in this
10 State is liable for the tax imposed by this Article. A
11 distributor, wholesale dealer, or retail dealer who brings into
12 this State a bottled soft drink or base product made outside the
13 State is the first person to handle the bottled soft drink or
14 base product in this State. A distributor, wholesale dealer, or
15 retail dealer who is the original consignee of a bottled soft
16 drink or base product that is made outside the State and is
17 shipped into the State is the first person to handle the bottled
18 soft drink or base product in this State.

19 (b) Secondary Liability.-- A retail dealer who acquires non-
20 tax-paid bottled soft drinks or non-tax-paid base products from a
21 distributor or a wholesale dealer is liable for any tax due on
22 the bottled soft drinks or base products. A retail dealer who is
23 liable for tax under this subsection may not deduct a discount
24 from the amount of tax due when reporting the tax.

25 (c) Monthly Report.-- Except for tax on a designated sale
26 under subsection (d), the taxes levied by this Article are
27 payable when a report is required to be filed. A report is due
28 on a monthly basis. A monthly report covers sales and other
29 activities occurring in a calendar month and is due within 15
30 days after the end of the month covered by the report. A report
31 shall be filed on a form provided by the Secretary and shall
32 contain the information required by the Secretary.

33 (d) Designation of Exempt Sale.-- A distributor or a wholesale
34 dealer who sells a bottled soft drink or a base product to a
35 person who has notified the distributor or wholesale dealer in
36 writing that the person intends to resell the item in a
37 transaction that is exempt from tax under G.S. 105-113.46(7) or
38 (8) may, when filing a monthly report under subsection (c),
39 designate the quantity of bottled soft drinks or base products
40 sold to the person for resale. A distributor or wholesale dealer
41 shall report a designated sale on a form provided by the
42 Secretary.

43 A distributor or a wholesale dealer is not required to pay tax
44 on a designated sale when filing a monthly report. The

1 distributor or wholesale dealer shall pay the tax due on all
2 other sales in accordance with this section. A distributor, a
3 wholesale dealer, or a customer of a distributor or wholesale
4 dealer may not delay payment of the tax due on a bottled soft
5 drink or base product by failing to pay tax on a sale that is not
6 a designated sale or by overstating the quantity of bottled soft
7 drinks or base products that will be resold in a transaction
8 exempt under G.S. 105-113.46(7) or (8).

9 A person who does not sell a bottled soft drink or base product
10 in a transaction exempt under G.S. 105-113.46(7) or (8) after a
11 distributor or a wholesale dealer has failed to pay the tax due
12 on the sale of the item to the person in reliance on the person's
13 written notification of intent is liable for the tax and any
14 penalties and interest due on the designated sale. If the
15 Secretary determines that a bottled soft drink or a base product
16 reported as a designated sale is not sold as reported, the
17 Secretary shall assess the person who notified the distributor or
18 wholesale dealer of an intention to resell the item in an exempt
19 transaction for the tax due on the sale and any applicable
20 penalties and interest. A distributor or a wholesale dealer who
21 does not pay tax on a bottled soft drink or base product in
22 reliance on a person's written notification of intent to resell
23 the item in an exempt transaction is not liable for any tax
24 assessed on the item.

25 (e) Refund.-- A distributor, a wholesale dealer, or a retail
26 dealer who pays tax on a bottled soft drink or a base product
27 that is exempt from the tax may obtain a refund for the amount of
28 tax paid by filing an application for refund with the Secretary
29 on a form provided by the Secretary. A refund for tax paid in
30 the first six months of a calendar year must be submitted by July
31 15, and a refund for tax paid in the second six months of a
32 calendar year must be submitted by January 15."

33 Sec. 8. G.S. 105-113.52 reads as rewritten:

34 "§ 105-113.52. ~~Taxpaid stamps; rules and regulations;~~
35 ~~cancellation; discount. Tax reduction and discount.~~

36 (a) ~~The Secretary shall make arrangements with some~~
37 ~~manufacturer to manufacture the taxpaid stamps provided for in~~
38 ~~this Article. The Secretary shall prescribe the form, design,~~
39 ~~denominations and such other matters as may be necessary with~~
40 ~~respect to said stamps. The Secretary may sell such stamps~~
41 ~~directly to taxpayers and may also make arrangements for release~~
42 ~~of taxpaid stamps to taxpayers by the manufacturer. Said~~
43 ~~manufacturer shall furnish such bond as the Secretary may deem~~
44 ~~advisable, in such penalty and upon such conditions as in the~~

~~1 opinion of the Secretary will adequately protect the State in the
2 collection of the excise tax imposed by this Article. Such bond
3 shall be executed by the manufacturer as principal and by an
4 indemnity company licensed to do business under the insurance
5 laws of this State, as surety. The costs of manufacture,
6 transportation and distribution of said stamps shall be computed
7 in accordance with administrative rules or regulations of the
8 Secretary and payment thereof pursuant to such rules and
9 regulations of the Secretary may be required in addition to the
10 amount of taxes which said stamps evidence regardless of whether
11 said stamps are released or distributed by the Secretary or by
12 the manufacturer pursuant to authorization from the Secretary.~~

~~13 (b) Upon the sale of taxpaid stamps, the Secretary shall allow
14 a discount of five percent (5%) of the entire amount of any sale
15 of fifty dollars (\$50.00) or more of said stamps. On sales of
16 stamps of less than fifty dollars (\$50.00), no discount shall be
17 allowed. Such discount shall apply only to the tax and not the
18 manufacturer's price or transportation or distribution costs.~~

~~19 (c) When stamps are attached to bottled soft drinks, or to
20 containers of soft drink powders or base products, no
21 cancellation or obliteration of them shall be required, but
22 stamps affixed to containers of syrup to be used at soda
23 fountains shall be canceled by the person affixing them by
24 writing or stamping with ink or indelible pencil across the
25 stamps his initials or name and the date on which the stamps were
26 affixed. When the container to which the stamp has been affixed
27 has been emptied, the stamp must be obliterated by making at
28 least three incisions crisscross through the stamp with a knife
29 or other sharp instrument.~~

~~30 (d) Any person who makes use of any stamp to denote the payment
31 of the tax imposed by this Article without canceling or
32 obliterating such stamps if required to do so by this section
33 shall be guilty of a misdemeanor and, upon conviction, shall be
34 fined not more than one hundred dollars (\$100.00) or be
35 imprisoned for not more than 30 days for each offense.~~

~~36 (a) Tax Reduction.-- The tax on the first fifteen thousand
37 gross of bottled soft drinks sold on or after October 1 of each
38 year by a distributor or wholesale dealer is seventy-two cents
39 (72¢) a gross rather than the amount stated in G.S. 105-113.45.
40 When reporting tax due on bottled soft drinks to which this
41 reduced rate applies, a distributor or wholesale dealer shall pay
42 the reduced amount.~~

~~43 (b) Discount.-- A distributor, a wholesale dealer, or a retail
44 dealer who is liable for the excise taxes on bottled soft drinks~~

1 or base products and who files a timely report under G.S.
2 105-113.51 may deduct from the amount due with the report a
3 discount of four percent (4%). This discount covers losses due
4 to spoilage and breakage, expenses incurred in preparing the
5 records and reports required by this Article, and the expense of
6 furnishing a bond. The discount does not apply to taxes paid at
7 the rate set in subsection (a)."

8 Sec. 9. G.S. 105-113.53 reads as rewritten:

9 "~~\$ 105-113.53. Stamps not required when crowns used.~~ Bonds.

10 ~~If a distributor of bottled soft drinks either within or~~
11 ~~without the State shall use taxpaid crowns as hereinafter~~
12 ~~provided, such distributor shall be relieved of the duty of~~
13 ~~affixing taxpaid stamps to each individual bottle. Whenever the~~
14 ~~Secretary deems it to be advantageous for the effective and~~
15 ~~efficient enforcement of this Article, he may require that such~~
16 ~~crowns be used in lieu of stamps. The Secretary may require a~~
17 ~~distributor, a wholesale dealer, or a retail dealer to furnish a~~
18 ~~bond in an amount that adequately protects the State from loss if~~
19 ~~the distributor or dealer fails to pay taxes due under this~~
20 ~~Article. A bond shall be conditioned on compliance with this~~
21 ~~Article, shall be payable to the State, and shall be in the form~~
22 ~~required by the Secretary. The Secretary shall proportion a bond~~
23 ~~amount to the anticipated tax liability of the distributor,~~
24 ~~wholesale dealer, or retail dealer. The Secretary shall~~
25 ~~periodically review the sufficiency of bonds required of~~
26 ~~distributors, wholesale dealers, and retail dealers and shall~~
27 ~~increase the amount of a required bond when the amount of the~~
28 ~~bond furnished no longer covers the anticipated tax liability of~~
29 ~~the distributor or dealer.~~"

30 Sec. 10. G.S. 105-113.57 reads as rewritten:

31 "~~\$ 105-113.57. Records required of ingredients received.~~

32 ~~Every person engaged in the business of making, mixing or~~
33 ~~compounding bottled soft drinks, soft drink syrups and powders,~~
34 ~~base products and other items taxed under this Article shall keep~~
35 ~~a distinct, legible and permanent record of all extracts,~~
36 ~~flavoring, sugar, syrup or other ingredients except water~~
37 ~~received by him that may be useful in making, mixing or~~
38 ~~compounding soft drinks, and he making bottled soft drinks or~~
39 ~~base products shall keep a record of the ingredients purchased to~~
40 ~~make the bottled soft drinks or base products and shall retain~~
41 ~~invoices on all such the purchases for a period of not less than~~
42 ~~three years from the date thereof. Such records shall show the~~
43 ~~quantity of such commodities received, the date of receipt~~
44 ~~thereof at least three years. The records shall show the~~

1 quantity of ingredients purchased, the date received, and the
2 name of the person from whom they were secured or received and
3 shall be open at all times for inspection by the Secretary or his
4 duly authorized representative. received. The records shall be
5 open at all times for inspection by the Secretary or a
6 representative of the Secretary."

7 Sec. 11. G.S. 105-113.58 reads as rewritten:

8 "§ 105-113.58. Records of ~~sale~~ sales, inventories, and purchases
9 to be kept.

10 Every distributor, wholesale ~~dealer~~ dealer, and retail dealer
11 shall keep an accurate account of all daily sales, sales slips,
12 bills, invoices, delivery slips, statements, bills of lading,
13 freight bills, credit memoranda and similar documents for a
14 period of not less than three years from the date shown thereon.
15 All such records of the distributor's or dealer's purchases,
16 inventories, and sales of bottled soft drinks and base products.
17 These records shall be open at all times for inspection by the
18 Secretary or his duly an authorized representative.
19 representative of the Secretary."

20 Sec. 12. G.S. 105-113.43, 105-113.48, 105-113.49,
21 105-113.54 through 105-113.56C, 105-113.59 through 105-113.62,
22 105-113.66, and 105-113.67 are repealed.

23 Sec. 13. The Secretary of Revenue shall redeem any
24 unused or mutilated but identifiable tax stamps or crowns
25 purchased pursuant to Article 2B of Chapter 105 of the General
26 Statutes that a taxpayer presents for redemption and shall refund
27 the face value of the stamps or crowns, less the discount allowed
28 at the time of the purchase of the stamps or crowns by the
29 taxpayer.

30 Sec. 14. The Secretary of Revenue shall review the
31 registrations of bottled soft drinks and juice concentrates made
32 under G.S. 105-113.47 before the effective date of this act. The
33 Secretary shall notify those registrants who no longer appear to
34 meet the exemption criteria that, for the bottled soft drink or
35 juice concentrate to continue to be exempt from the excise tax
36 imposed by Article 2B of Chapter 105 of the General Statutes, a
37 new registration application must be submitted. The excise tax
38 imposed by Article 2B of Chapter 105 of the General Statutes
39 applies to a previously registered bottled soft drink or juice
40 concentrate unless the Secretary determines from the new
41 application that the bottled soft drink or juice concentrate
42 continues to meet the exemption criteria.

43 Sec. 15. This act does not affect the rights or
44 liabilities of the State, a taxpayer, or another person arising

1 under a statute amended or repealed by this act before its
2 amendment or repeal; nor does it affect the right to any refund
3 or credit of a tax that would otherwise have been available under
4 the amended or repealed statute before its amendment or repeal.

5 Sec. 16. This act becomes effective October 1, 1991.

Explanation of Proposal 14

This proposal makes several changes to the excise tax on soft drinks. The proposal is a combination of changes included in House Bill 2232 of the 1989 Session and of changes recommended by the Department of Revenue. The main purposes of the proposal are to establish a uniform reporting method and a uniform discount and to decrease the number of exemptions to the tax, thereby enabling the Department of Revenue to focus on collecting the tax rather than on administering the numerous exemptions to the tax.

The substantive changes made by the proposal are as follows:

1. It eliminates payment of the excise tax on soft drinks based on the purchase of stamps and crowns. Current law allows payment based on stamps and crowns but does not require it and the method is used infrequently.
2. It establishes a uniform monthly reporting method for payment of the excise tax by distributors, wholesale dealers, and retail dealers. Current law allows payment of tax based on monthly reports but does not require it. G.S. 105-113.56A allows distributors and wholesale dealers of bottled soft drinks to pay the tax based on monthly reports of sales; G.S. 105-113.56B allows distributors and wholesale dealers of base products to pay the tax based on monthly reports of sales; and G.S. 105-113.56C allows retail dealers of bottled soft drinks and base products to pay the tax based on monthly reports of sales.

The proposal does not change the time allowed for filing a monthly report.

3. It establishes a uniform 4% discount, allows the discount only if the tax is paid on time, and does not allow a discount on bottled soft drinks subject to tax at a reduced rate. The 4% discount is the same percentage discount as is allowed under the alcoholic beverage excise tax. Under current law, the discount varies with the method of payment, can be claimed whether or not the tax is timely paid, and applies to bottled soft drinks taxable at 72¢ a gross rather than 1¢ a bottle.

The current discount varies from 0% to more than 8%. A person who pays by the stamp method receives a discount of 5% of the amount of stamps purchased that exceeds \$50.00 (G.S. 105-113.52(b)). A person who pays by the crown method receives a discount of 8% (G.S. 105-113.54(c)). A distributor or

wholesaler of bottled soft drinks who pays based on monthly reports receives a tax reduction on the first 15,000 gross sold each year plus 8% (G.S. 105-113.56A). The tax on the first 15,000 gross is 72¢ a gross rather than 1¢ a bottle. A distributor or wholesaler of base products who pays based on monthly reports receives no discount (G.S. 105-113.56B). A retail dealer who pays based on monthly reports receives no discount (G.S. 105-113.56C).

4. It establishes a procedure for identifying soft drinks that will ultimately be sold outside the State or to the federal government and are therefore exempt from tax. By this procedure, a distributor or wholesale dealer who sells a taxable item that is to be resold outside the State or to the federal government can sell the item without collecting tax on the item if the purchaser gives the distributor or wholesale dealer a written statement certifying the amount that will be resold in a non-taxable transaction.

Under current law, tax is collected whenever a bottled soft drink or base product is sold. If a distributor or wholesale dealer sells to a person who resells the item outside the State or to the federal government, the person notifies the distributor, the distributor gives the person a credit on the next tax the distributor collects when selling a bottled soft drink or base product to the person, and the distributor applies to the Department of Revenue for a refund. This procedure is awkward and unnecessarily time-consuming.

5. It replaces the exemption for soft drinks that contain at least 35% natural fruit or vegetable juice and have no artificial flavoring, coloring, or preservative with an exemption for soft drinks that are 100% natural fruit or vegetable juice. Currently, there are over 500 exemptions of soft drinks that contain at least 35% juice but less than 100% juice. Enactment of this proposal will eliminate these exemptions. The exemptions are time-consuming to administer because the Department must register an item as exempt and periodically check the formula of the item to ensure that it is still tax-exempt.
6. It replaces the exemption for milk drinks that contain at least 35% milk, regardless of whether they also contain artificial flavoring, coloring, or preservatives, with an exemption for milk drinks that contain at least 70% milk. Under the revised exemption, an exempt milk drink can continue to contain artificial flavoring, coloring, or preservatives.
7. It deletes the exemption for base products that are for domestic as opposed to commercial use.

In addition to the substantive changes, the bill makes numerous technical changes. It deletes unnecessary or obsolete language and makes numerous clarifying changes.

Proposal 14

Explanation

This proposal makes the following changes to the soft drink excise tax:

1. It eliminates payment of the tax based on the purchase of stamps and crowns and establishes a uniform monthly reporting method.
2. It establishes a uniform 4% discount, allows the discount only if the tax is paid on time, and does not allow a discount on bottled soft drinks that are taxed at 1/2 the regular excise tax rate of 1¢ a bottle.
3. It establishes a procedure for identifying soft drinks that will ultimately be sold outside the State or to the federal government and are therefore exempt from tax and allows a distributor or wholesale dealer to sell the identified soft drinks without collecting the excise tax that would otherwise apply.
4. It replaces the exemption for soft drinks that contain at least 35% natural fruit or vegetable juice with an exemption for soft drinks that have 100% natural fruit or vegetable juice.
5. It replaces the exemption for milk drinks that contain at least 35% milk with an exemption for milk drinks that contain at least 70% milk.
6. It deletes the exemption for base products that are for domestic as opposed to commercial use.
7. It deletes unnecessary or obsolete language and makes numerous clarifying changes.

Effective Date

October 1, 1991

Fiscal Effect

The proposal will produce increased General Fund tax revenue of approximately \$763,985 each full fiscal year. Of this amount, \$263,985 is the result of reducing the 8% discount allowed on bottled soft drinks and eliminating the discount on bottled soft drinks that are taxed at 1/2 the regular rate. The remaining \$500,000 is the result of changing the exemption for natural fruit and vegetable juice drinks to require the drink to be 100% natural rather than 35% natural to receive the exemption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

PROPOSAL 15 (91-LJX-9)

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Fuel Tax Changes To Enter Fuel Pact. (Public)

Sponsors: Reps. Lilley, Abernethy, Brawley, Hasty.

Referred to:

A BILL TO BE ENTITLED

1 AN ACT TO MODIFY THE FUEL TAX STATUTES TO ENABLE NORTH CAROLINA
2 TO ENTER THE INTERNATIONAL FUEL TAX AGREEMENT.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 105-449.22 reads as rewritten:

5 "~~§ 105-449.22. Leased motor vehicles.~~

6 ~~(a) Except as provided in this section, the lessee of a motor~~
7 ~~vehicle, and not the lessor of the motor vehicle, is the "user,"~~
8 ~~"user-seller," or "supplier," as the case may be, for the~~
9 ~~purposes of this Article.~~

10 ~~(b) A lessor of a motor vehicle who gives written notice, by~~
11 ~~filing a report or otherwise, to the Secretary that the lessor~~
12 ~~desires to be taxed as a user, user-seller or supplier may be~~
13 ~~treated by the Secretary as a user, user-seller, or supplier with~~
14 ~~respect to a motor vehicle leased to another by him as well as~~
15 ~~fuel consumed by the leased motor vehicle when the lessor~~
16 ~~supplies or pays for the fuel consumed by the motor vehicle or~~
17 ~~makes rental or other charges calculated to include the cost of~~
18 ~~the fuel. A lessee may exclude from reports made pursuant to this~~
19 ~~Article a motor vehicle of which he is the lessee if that motor~~
20 ~~vehicle is leased from a lessor who is a user, user-seller, or~~
21 ~~supplier pursuant to this section.~~

22 ~~(c) Subsections (a) and (b) govern the primary liability of~~
23 ~~lessors and lessees of motor vehicles under this Article. Both~~
24

1 ~~the lessor and lessee, however, are jointly and severally liable~~
2 ~~for compliance with this Article.~~

3 The user under this Article of fuel consumed by a leased motor
4 vehicle whose operations are reported under Article 36B of this
5 Chapter is the person who is the motor carrier under Article 36B
6 for reporting operations of the motor vehicle. The user under
7 this Article of fuel consumed by a leased motor vehicle whose
8 operations are not reported under Article 36B of this Chapter is
9 the person who is liable for payment for the fuel consumed by the
10 motor vehicle."

11 Sec. 2. G.S. 105-449.37(a) reads as rewritten:

12 "(a) Definitions.-- As used in this Article unless the context
13 clearly requires otherwise:

14 (1) "Motor carrier" means every person, firm, or
15 corporation who operates or causes to be operated
16 on any highway in this State a motor vehicle used,
17 designed, or maintained for transportation of
18 persons or property and (i) having two axles and a
19 gross vehicle weight or registered gross vehicle
20 weight exceeding 26,000 pounds, (ii) having three
21 or more axles regardless of weight, or (iii) used
22 in combination when the weight of the combination
23 exceeds 26,000 pounds gross vehicle weight. The
24 term does not include the United States, ~~the State~~
25 ~~or its political subdivisions, operators of special~~
26 ~~mobile equipment as defined in G.S. 20-4.01(44), or~~
27 ~~nonprofit religious, educational, charitable, or~~
28 ~~benevolent organizations; States, the State, or a~~
29 political subdivision of the State.

30 (1a) "Motor vehicle" means motor vehicle as defined in
31 G.S. 20-4.01(23) except that the term does not
32 include special mobile equipment as defined in G.S.
33 20-4.01(44) or recreational vehicles; vehicles.

34 (2) "Operations" means operations of all vehicles
35 described in subdivision (1), whether loaded or
36 empty and whether or not operated for ~~compensation;~~
37 and compensation.

38 (3) "Secretary" means the Secretary of Revenue."

39 Sec. 3. G.S. 105-449.39 reads as rewritten:

40 "§ 105-449.39. Credit for payment of motor fuel tax.

41 Every motor carrier subject to the tax levied by this Article
42 is entitled to a credit for tax paid by the carrier on fuel
43 purchased in the State. at a rate equal to the flat cents-per-
44 gallon rate plus the variable cents-per-gallon rate of tax in

1 effect during the quarter for which the credit is claimed. To
2 obtain this credit, the motor carrier must furnish evidence
3 satisfactory to the Secretary that the tax for which the credit
4 is claimed has been paid.

5 If the amount of a credit to which a motor carrier is entitled
6 for a quarter exceeds the motor carrier's liability for that
7 quarter, the excess may, in accordance with rules adopted by the
8 Secretary, be refunded to the motor carrier or carried forward
9 and applied to the motor carrier's tax liability for another
10 quarter. ~~The Before the Secretary may not allow a refund without~~
11 ~~auditing allows a motor carrier a refund, the Secretary may audit~~
12 ~~the motor carrier's records unless or require the motor carrier:~~

- 13 (1) ~~Has furnished a bond under G.S. 105-449.40; or~~
- 14 (2) ~~Has complied with this Subchapter and the rules~~
15 ~~adopted under the Subchapter for at least a one-~~
16 ~~year period preceding the date the application for~~
17 ~~a refund is filed.~~

18 carrier to furnish a bond under G.S. 105-449.40."

19 Sec. 4. G.S. 105-449.40 reads as rewritten:

20 "§ 105-449.40. Refunds to motor carriers who give Secretary may
21 require bond.

22 A motor carrier may give a bond in an amount no less than five
23 hundred dollars (\$500.00) nor more than ten thousand dollars
24 (\$10,000) payable to the State and conditioned that the motor
25 carrier will pay all taxes due and to become due under this
26 Article. So long as the bond remains in force the Secretary may
27 order refunds to the motor carrier in the amounts appearing to be
28 due on applications duly filed by the carrier under G.S.
29 105-449.39 without first auditing the records of the carrier.
30 Such bond shall be in such form and with such surety or sureties
31 as may be required by the Secretary. The Secretary may require a
32 motor carrier to furnish a bond when any of the following occurs:

- 33 (1) The motor carrier fails to file a report within the
34 time required by this Article.
- 35 (2) The motor carrier fails to pay a tax when due under
36 this Article.
- 37 (3) After auditing the motor carrier's records, the
38 Secretary determines that a bond is needed to
39 protect the State from loss in collecting the tax
40 due under this Article.

41 A bond required of a motor carrier under this section may not
42 exceed five hundred dollars (\$500.00) or four times the amount of
43 the motor carrier's average tax liability or refund for a

1 reporting period, whichever is greater. A bond must be in the
2 form required by the Secretary."

3 Sec. 5. G.S. 105-449.42A reads as rewritten:

4 "§ 105-449.42A. Leased motor vehicles.

5 (a) Lessor In Leasing Business.-- Except as provided in this
6 section, the lessee of a motor vehicle, and not the lessor of the
7 motor vehicle, is a "motor carrier" for the purposes of this
8 Article. A lessor who is regularly engaged in the business of
9 leasing or renting motor vehicles without drivers for
10 compensation is the motor carrier for a leased or rented motor
11 vehicle unless the lessee of the leased or rented motor vehicle
12 gives the Secretary written notice, by filing a report or
13 otherwise, that the lessee is the motor carrier. In that
14 circumstance, the lessee is the motor carrier for the leased or
15 rented motor vehicle.

16 Before a lessee gives the Secretary written notice under this
17 subsection that the lessee is the motor carrier, the lessee and
18 lessor must make a written agreement for the lessee to be the
19 motor carrier. Upon request of the Secretary, the lessee must
20 give the Secretary a copy of the agreement.

21 (b) Independent Contractor.-- A lessor of a motor vehicle who
22 gives written notice, by filing a report or otherwise, to the
23 Secretary that the lessor desires to be taxed as a motor carrier
24 may be treated by the Secretary as a motor carrier with respect
25 to a motor vehicle leased to another by him as well as motor fuel
26 consumed by the leased motor vehicle when the lessor supplies or
27 pays for the motor fuel consumed by the motor vehicle or makes
28 rental or other charges calculated to include the cost of the
29 fuel. A lessee motor carrier may exclude from reports made
30 pursuant to this Article a motor vehicle of which he is the
31 lessee if that motor vehicle is leased from a lessor who is a
32 motor carrier pursuant to this section.

33 The lessee of a motor vehicle that is leased from an independent
34 contractor is the motor carrier for the leased motor vehicle
35 unless either of the following applies:

- 36 (1) The motor vehicle is leased for fewer than 30 days.
37 (2) The motor vehicle is leased for at least 30 days
38 and the lessor gives the Secretary written notice,
39 by filing a report or otherwise, that the lessor is
40 the motor carrier.

41 If either of these circumstances applies, the lessor is the motor
42 carrier for the leased motor vehicle.

43 Before a lessor gives the Secretary written notice under
44 subdivision (2) that the lessor is the motor carrier, the lessor

1 and lessee must make a written agreement for the lessor to be the
2 motor carrier. Upon request of the Secretary, the lessor must
3 give the Secretary a copy of the agreement.

4 (c) Liability.-- Subsections (a) and (b) govern the primary
5 liability of lessors and lessees of motor vehicles under this
6 Article. Both the lessor and lessee, however, are jointly and
7 severally liable for compliance with this Article."

8 Sec. 6. G.S. 105-449.47 reads as rewritten:

9 "§ 105-449.47. Registration of vehicles.

10 A motor carrier may not operate or cause to be operated in this
11 State any vehicle listed in the definition of motor carrier
12 unless both the motor carrier has registered the vehicle and the
13 motor vehicle are registered with the Secretary for purposes of
14 the tax imposed by this Article with the Secretary. Article.

15 Upon application, the Secretary shall register a motor carrier
16 and shall issue a registration card and at least one
17 identification marker for a vehicle. each motor vehicle operated
18 by the motor carrier. The registration card A copy of the
19 registration of a motor carrier shall be carried in the each
20 motor vehicle for which it was issued operated by the motor
21 carrier when the vehicle is in this State. The An identification
22 marker shall be clearly displayed at all times and shall be
23 affixed to the vehicle for which it was issued in the place and
24 manner designated by the Secretary. Every identification marker
25 issued shall bear a number that corresponds to the number on the
26 registration card issued for the same vehicle. Registration
27 cards Registrations and identification markers required by this
28 section shall be issued on a calendar year basis. The Secretary
29 may renew registration cards and identification markers without
30 issuing new cards and markers. a registration or an
31 identification marker without issuing a new registration or
32 identification marker. All identification markers issued by the
33 Secretary remain the property of the State. The Secretary may
34 withhold or revoke a registration card and or an identification
35 marker when a motor carrier fails to comply with this Article or
36 Article 36A of this Subchapter."

37 Sec. 7. This act becomes effective January 1, 1992.

Explanation of Proposal 15

As the title indicates, this proposal changes several provisions in the motor fuel tax statutes to enable North Carolina to enter the International Fuel Tax Agreement (IFTA). As of December 1, 1990, at least 16 states belong to the IFTA and four more, including North Carolina, have indicated a desire to join. The current member states are primarily midwestern and western states.

The IFTA is an agreement between member taxing jurisdictions to assist each other in the collection and administration of taxes paid by interstate motor carriers on their use of motor fuel. These taxes are frequently referred to as road taxes or highway use taxes and are not to be confused with the motor vehicle titling tax enacted in 1989 that is also referred to as a highway use tax.

The road tax is a tax on the amount of fuel a motor carrier uses in its operations in a state. The tax is the same as the state's per gallon excise tax on motor fuel and a credit is given for excise taxes paid to the state on motor fuel. Thus, the purpose of the tax is to tax motor carriers who drive in a state using fuel purchased in another state.

Under the IFTA, a motor carrier declares one member jurisdiction to be the carrier's base jurisdiction for registering the carrier's vehicles for purposes of the road taxes and reporting the taxes due to all the member jurisdictions. The base jurisdiction then collects the road taxes payable by the motor carrier to every member jurisdiction and remits the taxes collected to the appropriate jurisdiction. By centralizing the payment and collection of road taxes, the agreement greatly simplifies the payment of road taxes by motor carriers and the collection of road taxes by the member jurisdictions.

The IFTA requires a member jurisdiction to agree to certain administrative provisions to ensure uniformity among the participating jurisdictions. Some of North Carolina's statutes conflict with these provisions and must be changed in order for North Carolina to be able to enter the IFTA. This proposal makes the necessary changes. The changes are described in the section-by-section analysis that follows.

Section 1 changes the law on who is a user of special fuel, which is primarily diesel fuel, for reporting fuel consumed by a leased motor vehicle. G.S. 105-449.10

requires a user of special fuel to file quarterly reports of fuel use. For leased motor vehicles, the question is whether the lessor or lessee must file the report.

Under current law, the lessee must file the report unless the lessor supplies the fuel, pays for the fuel, or includes the cost of fuel in the lease and elects to be the lessee. Under the proposal, the one who is designated as the motor carrier with respect to the leased vehicle must file the report. If the leased vehicle is not subject to the road tax and, consequently, neither the lessor nor the lessee is a motor carrier with respect to the vehicle, the one who is liable for payment of the fuel consumed by the leased vehicle must file the report.

Section 2 modifies the exemptions from the road tax to ensure that the same vehicles are subject to road tax in each member jurisdiction under the IFTA. The proposal deletes the current exemptions for vehicles operated by nonprofit organizations and leaves the exemptions for vehicles operated by the United States, vehicles operated by the State or a political subdivision of the State, and special mobile equipment.

Section 3 modifies the refund provisions of the road tax to ensure that a motor carrier who registers under the IFTA is subject to the same refund provisions in each member jurisdiction of the IFTA. The proposal allows the Secretary of Revenue to refund a motor carrier for excess motor fuel excise taxes paid without first auditing the motor carrier's records or either requiring the motor carrier to furnish a bond or establishing a one-year history of compliance with the motor fuel tax laws. Under current law, the Secretary may not refund excess tax paid by a motor carrier unless the Secretary audits the carrier or the carrier either furnishes a bond or has a one-year history of compliance with the motor fuel tax laws.

Section 4 enables the Secretary of Revenue to require a motor carrier to furnish a bond in certain circumstances and raises the maximum bond from \$10,000 to four times a carrier's expected liability or refund. Again, these changes are made to ensure uniformity.

Under current law, a motor carrier is required to furnish a bond only if the carrier wants a refund of taxes paid and does not have a one-year history of compliance with the motor fuel tax laws. Under the proposal, the Secretary can require a motor carrier to file a bond when the motor carrier fails to file a report or pay tax when due or the Secretary determines after auditing the motor carrier that a bond is needed to protect the State from loss.

The maximum bond required under current law is \$10,000. The proposal increases the maximum bond to four times the carrier's liability to North Carolina to

reflect the increase in the amount of taxes collected by North Carolina as the base state. For motor carriers who designate North Carolina as their base jurisdiction, North Carolina will collect road taxes payable to all the other member jurisdictions.

Section 5 is a companion change to the change made in Section 1 concerning leased motor vehicles. This section changes the law on who between the lessor and lessee of a leased motor vehicle is considered the motor carrier and must consequently file quarterly road tax reports and pay the road tax. Under current law, the lessee is the motor carrier unless the lessor supplies the fuel, pays for the fuel, or includes the cost of fuel in the lease and elects to be the lessee.

Under the proposal, the answer to the question of who between the lessor and the lessee is the motor carrier differs depending on whether the lessor is a company like Ryder that is regularly engaged in the leasing business or is an independent contractor and owner-operator of a truck or other vehicle. If the lessor is regularly engaged in the leasing business, the lessor is the motor carrier unless the lessor and lessee agree that the lessee is the motor carrier and the lessee notifies the Secretary of Revenue. If the lessor is an independent contractor, the lessee is the motor carrier unless either the motor vehicle whose operations must be reported is leased for fewer than 30 days or the motor vehicle is leased for at least 30 days, the lessor and lessee agree that the lessor is the motor carrier, and the lessor notifies the Secretary of Revenue.

Section 6 modifies the procedure for registering a motor carrier and its fleet for purposes of the road tax. The modifications are made to accommodate the registration procedures under the IFTA. The section changes current law by requiring registration of both a motor carrier and each vehicle in the carrier's fleet and by eliminating the requirement that each identification marker for a vehicle have a unique identifying number.

Under current law, each motor vehicle operated by a motor carrier is registered with the Department of Revenue and the motor carrier is not separately registered. The Department assigns a unique number to each registered motor vehicle and issues a registration card, which is carried in the cab of the motor vehicle, and an identification marker, which is placed on the vehicle.

Under the IFTA, registration focuses on the motor carrier and both the motor carrier and the vehicles in the carrier's fleet are registered. Each motor carrier is assigned a unique number but not each motor vehicle in a carrier's fleet. An identification marker is issued for each vehicle in the carrier's fleet but the marker identifies the vehicle as part of a certain carrier's fleet. A copy of the motor carrier's

registration must be carried in the cab of each motor vehicle and the vehicle's identification marker must be placed on the vehicle.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

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PROPOSAL 16 (91-LJ-10)
THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Improve Fuel Tax Laws/ Bond Limit. (Public)

Sponsors: Sen. Winner, Kincaid, Staton.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAXES ON MOTOR FUELS,
3 SPECIAL FUEL, AND MOTOR CARRIERS, AND TO TEMPORARILY RESTORE
4 THE \$40,000 CAP ON BONDS THAT MAY BE REQUIRED OF FUEL
5 DISTRIBUTORS AND SUPPLIERS.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-433 reads as rewritten:
8 "§ 105-433. Application for license as distributor- distributor;
9 bond or letter of credit required.
10 (a) Application.-- Any distributor engaged in business on
11 April 1, 1931, shall, within 30 days thereafter, and any other
12 distributor shall, prior to the commencement of doing business,
13 file a duly acknowledged application for a license with the
14 Secretary of Revenue on a form prescribed and furnished by him
15 setting forth the name under which such distributor transacts or
16 intends to transact business within this State, the address of
17 each place of business and a designation of the principal place
18 of business. If such distributor is a firm or association, the
19 application shall set forth the name and address of each person
20 constituting the firm or association, and if a corporation, the
21 names and addresses of the principal officers and such other
22 information as the Secretary of Revenue may require. Every
23 distributor shall obtain a license from the Secretary of Revenue.
24 To obtain a license, an applicant must file an application with

1 the Secretary of Revenue on a form provided by the Secretary and
2 file with the Secretary a bond or an irrevocable letter of
3 credit. An application shall include the applicant's name and
4 address and any other information required by the Secretary of
5 Revenue. If the applicant is a corporation, the applicant must
6 either be incorporated in this State or be authorized to transact
7 business in this State. If the applicant is a limited
8 partnership, the applicant must either be formed in this State or
9 be authorized to transact business in this State. If the
10 applicant is an individual or a general partnership, the
11 applicant must designate an agent for service of process and give
12 the agent's name and address.

13 (b) Bond.-- Each applicant for a distributor's license must
14 file with the Secretary of Revenue a bond or an irrevocable
15 letter of credit. ~~distributor shall at the same time file a bond~~
16 ~~in such amount, in such form, and with such surety or sureties as~~
17 ~~may be required by the Secretary of Revenue, conditioned upon the~~
18 ~~rendition of the reports and the payment of the tax hereinafter~~
19 ~~provided for.~~ The amount of the bond required by the Secretary
20 or irrevocable letter of credit may not exceed the greater of (i)
21 two thousand dollars (\$2,000) or (ii) two times the distributor's
22 applicant's average expected monthly tax liability under this
23 Article or, in the case of an initial bond, two times the
24 distributor's estimated average monthly tax liability under this
25 Article, as determined by the Secretary. Secretary, and may not
26 be less than two thousand dollars (\$2,000). A distributor An
27 applicant who is also required to be bonded file a bond or an
28 irrevocable letter of credit under G.S. 105-449.5 as a supplier
29 of special fuels may file a single bond, bond or irrevocable
30 letter of credit under either this section or under G.S.
31 105-449.5, G.S. 105-449.5 for the combined amount required under
32 these sections and amount. A bond filed under this section shall
33 be conditioned upon compliance with the requirements of Article
34 36 and Article 36A of this Subchapter. Subchapter, shall be
35 payable to the State, and shall be in the form required by the
36 Secretary of Revenue.

37 A After filing a bond or an irrevocable letter of credit with
38 an application for a distributor's license, a distributor
39 required to file a bond under this section shall, within 30 days
40 after receiving a notice from the Secretary of Revenue, file an
41 additional bond or irrevocable letter of credit in the amount
42 requested by the Secretary. The amount of the initial bond or
43 irrevocable letter of credit and any additional bonds bond or

1 irrevocable letter of credit filed by the distributor, however,
2 may not exceed the limits set in this section.
3 (c) Issuance.-- Upon approval of the application and bond, the
4 Secretary of Revenue shall issue to the distributor a
5 nonassignable license with a duplicate copy for each place of
6 business of said distributor in this State, which shall be
7 displayed in a conspicuous place at each such place of business
8 and shall continue in force until surrendered or canceled. No
9 distributor shall sell, offer for sale, or use any motor fuels
10 within this State until such license has been issued. The
11 Secretary of Revenue shall issue a distributor's license to an
12 applicant who meets the requirements of this section and shall
13 issue a duplicate copy of the license for each place of business
14 of the distributor. A distributor shall display a license issued
15 under this section in a conspicuous place at each place of
16 business of the distributor. A distributor's license is not
17 transferable and remains in effect until surrendered or
18 cancelled. Any distributor failing to comply with or violating
19 any of the provisions of this section shall be guilty of a
20 misdemeanor and upon conviction thereof shall be fined not less
21 than one hundred dollars (\$100.00), nor more than five thousand
22 dollars (\$5,000), or imprisonment for not more than 24 months, or
23 both."

24 Sec. 2. G.S. 105-440 reads as rewritten:
25 "§ 105-440. Applications for and administration of tax refunds;
26 criminal penalty.

27 (a) Annual Refunds. -- An application for an annual refund of
28 tax permitted by this Article shall be filed with the Secretary
29 of Revenue on or before April 15th following the end of the
30 calendar year for which the refund is claimed. The application
31 shall state whether or not the applicant has filed a North
32 Carolina income tax return for the preceding taxable year, and
33 shall state that the applicant has paid for the fuel for which a
34 refund is claimed or that payment for the fuel has been secured
35 to the seller's satisfaction.

36 (b) Quarterly Refunds. -- An application for a quarterly
37 refund of tax permitted by this Article shall be filed with the
38 Secretary of Revenue on or before the last day of the month
39 following the end of the calendar quarter for which the refund is
40 claimed. The application shall state that the applicant has paid
41 for the fuel for which a refund is claimed or that payment for
42 the fuel has been secured to the seller's satisfaction.

43 (c) Late Applications. -- ~~Applications~~ An application filed
44 with the Secretary within six months of the date the application

1 is due shall be ~~accepted, accepted but the amount of the refund~~
2 ~~shall be reduced by~~ is subject to a penalty of twenty-five
3 percent (25%) of the amount of the refund otherwise due if the
4 application is filed within 30 days after the date the
5 application is due, and ~~shall be reduced by~~ is subject to a
6 penalty of fifty percent (50%) of the amount of the refund
7 otherwise due if the application is filed more than 30 days but
8 within six months after the date the application is due. ~~An The~~
9 Secretary may not accept an application filed more than six
10 months after the date the application is ~~due shall not be~~
11 ~~accepted, due.~~

12 (d) Approval of Refund. -- If the Secretary of Revenue
13 determines that an application for refund is correct, he shall
14 issue the applicant a warrant upon the State Treasurer for the
15 amount of the refund. If the Secretary determines that an
16 application for refund is incorrect, he shall send a written
17 notice of his determination to the applicant, stating a time and
18 place for a hearing. If, upon holding the hearing, the Secretary
19 finds the applicant has collected or sought to collect a refund
20 to which he is not entitled, he shall reject the application and
21 the applicant shall be required to pay back the tax, if any,
22 refunded to him on the basis of the rejected application. The
23 applicant may seek review of the Secretary's decision under G.S.
24 105- 241.2, 105-241.3, and 105-241.4.

25 (e) Criminal Penalty. -- A person who knowingly makes a false
26 application for refund to obtain a refund to which he is not
27 entitled is guilty of a misdemeanor and is punishable by a fine
28 of up to five hundred dollars (\$500.00), imprisonment for up to
29 two years, or both."

30 Sec. 3. G.S. 105-441 reads as rewritten:

31 "§ 105-441. Enumeration of acts constituting misdemeanor;
32 cancellation of license and bond.

33 (a) Acts.-- Any distributor who ~~shall fail, neglect, or~~
34 ~~refuse to make the reports herein required or pay the taxes~~
35 ~~herein imposed, or who shall refuse to permit the Secretary of~~
36 ~~Revenue or any agent appointed by him, to examine the books and~~
37 ~~records of such distributor pertaining to the motor fuels made~~
38 ~~taxable by this Article or who shall make any false, or~~
39 ~~fraudulent report or statement hereunder, or who does, or~~
40 ~~attempts to do, anything whatsoever to avoid a full disclosure of~~
41 ~~the quantity of motor fuels sold, distributed or used within this~~
42 ~~State, or who fails to file an additional bond required under~~
43 ~~G.S. 105-433 shall be guilty of a misdemeanor, and, on commits~~
44 one or more of the following acts is guilty of a misdemeanor:

- (1) Fails to obtain a license required by this Article.
- (2) Wilfully fails to make a report required by this Article.
- (3) Wilfully fails to pay a tax when due under this Article.
- (4) Makes a false statement in an application, a report, or a statement required under this Article.
- (5) Fails to keep records as required under this Article.
- (6) Refuses to allow the Secretary of Revenue or a representative of the Secretary of Revenue to examine the distributor's books and records concerning motor fuel.
- (7) Fails to disclose the correct amount of motor fuel sold or used in this State.
- (8) Fails to file an additional bond as required under this Article.

On conviction, a distributor shall be fined not less than one hundred dollars (\$100.00) and not more than five thousand dollars (\$5,000) or, in the case of an individual or the officer or employee charged with the duty of making such a report for a corporation, to be imprisoned not exceeding 24 months, or both, and the Secretary of Revenue may forthwith cancel the license of such distributor and notify him in writing of such cancellation by registered mail to be sent to his last known address. In the event that the license of any distributor is cancelled as above provided, and in the event such distributor shall have paid to the State of North Carolina all the taxes due and payable by him under this Article, together with any and all penalties accruing under the provisions of this Article, then the Secretary of Revenue shall cancel and surrender the bond theretofore filed by said distributor, both.

(b) Cancellation.-- The Secretary of Revenue may summarily cancel the license of a distributor when the Secretary finds that the distributor is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a distributor who commits one or more of the acts listed in subsection (a) after holding a hearing on whether the license should be cancelled.

The Secretary of Revenue shall send a distributor whose license is summarily cancelled a notice of the cancellation and shall give the distributor an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The

1 Secretary of Revenue shall give a distributor whose license may
2 be cancelled after a hearing at least 10 days' written notice of
3 the date, time, and place of the hearing. A notice of a summary
4 license cancellation and a notice of hearing shall be sent by
5 registered mail to the last known address of the distributor.

6 When the Secretary cancels the license of a distributor, the
7 Secretary shall return the bond or irrevocable letter of credit
8 filed by the distributor if the distributor has paid all taxes
9 and penalties due under this Article."

10 Sec. 4. G.S. 105-446 reads as rewritten:

11 "§ 105-446. Refund for tax on motor fuel used other than to
12 propel a motor vehicle.

13 A person who purchases and uses motor fuel for a purpose other
14 than to operate a licensed motor vehicle may receive an annual
15 ~~refund~~, refund for the tax the person paid on fuel used during
16 the preceding calendar ~~year~~, year at a rate equal to the amount
17 of the flat cents-per-gallon rate in effect during the year for
18 which the refund is claimed plus the average of the two variable
19 cents-per-gallon rates in effect during that year, less one cent
20 (1¢) per gallon. An application for a refund allowed under this
21 section shall be made in accordance with G.S. 105-440."

22 Sec. 5. G.S. 105-449.2 reads as rewritten:

23 "§ 105-449.2. Definitions.

24 The following words, terms and phrases as used in this Article
25 are, for the purposes thereof, hereby defined as follows:
26 definitions apply in this Article:

27 (1) "Secretary" shall mean the Secretary of Revenue.

28 (2) "Motor vehicle" means a self-propelled vehicle that
29 is designed for use on a highway.

30 (3) "Fuel" means combustible gases and liquids, other
31 than those subject to tax under Article 36, that
32 are or can be used to generate power to propel a
33 motor vehicle.

34 (4) "Highway" shall mean and include every way or place
35 of whatever nature open to the use of the public
36 for purposes of vehicular travel in this State,
37 including the streets and alleys in towns and
38 cities.

39 (5) "Person" shall mean and include natural persons and
40 partnerships, firms, associations and corporations.

41 (6) "Use" shall mean and include, in addition to its
42 original meaning, the receipt of fuel by any person
43 into the fuel supply tank of a motor vehicle or

- 1 into a receptacle for which fuel is supplied by any
2 person to his own or other motor vehicles.
- 3 ~~(7) "User" means a person who owns or operates a~~
4 ~~fuel-propelled motor vehicle licensed under~~
5 ~~Chapter 20 and who does not maintain storage~~
6 ~~facilities for fueling the vehicle.~~
- 7 ~~(8) a. "User-seller" shall mean a bulk user or~~
8 ~~reseller as defined in this subdivision:~~
- 9 ~~b. "Bulk user" means any person who maintains~~
10 ~~storage facilities in excess of 100 gallons~~
11 ~~and stores fuel therein, and who dispenses~~
12 ~~such fuel into the fuel tanks of, or attached~~
13 ~~to, motor vehicles owned, leased or operated~~
14 ~~by him.~~
- 15 ~~c. "Reseller" means any person who maintains~~
16 ~~storage facilities in excess of 100 gallons~~
17 ~~and stores fuel therein, and who sells and/or~~
18 ~~dispenses such fuel to the public at retail~~
19 ~~locations into the fuel tanks of, or attached~~
20 ~~to, motor vehicles.~~
- 21 ~~(9) "Supplier" means a person who:~~
- 22 ~~a. Sells or delivers fuel to a user-seller; or~~
23 ~~b. Maintains an inventory of fuel, part or all of~~
24 ~~which he uses or sells for use in a motor~~
25 ~~vehicle, and is not required to be licensed as~~
26 ~~a user-seller; or~~
- 27 ~~c. Imports fuel, other than in the usual tank or~~
28 ~~receptacle connected with the engine of a~~
29 ~~motor vehicle, into the State for his own use.~~
- 30 ~~(10) Repealed by Session Laws 1985 (Reg. Sess., 1986),~~
31 ~~c. 937, s. 14, effective July 8, 1986.~~
- 32 ~~(11) "Liquid" means any substance which is liquid at~~
33 ~~temperature in excess of 60 degrees F. and a~~
34 ~~pressure of 14.7 pounds per square inch absolute.~~
- 35 (1) Fuel.-- A combustible gas or liquid that can be
36 used to generate power to propel a motor vehicle
37 and that is not subject to tax under Article 36 of
38 this Chapter.
- 39 (2) Highway.-- Defined in G.S. 20-4.01(13).
- 40 (3) Liquid.-- A substance that is liquid at a
41 temperature above 60 degrees F. and a pressure
42 greater than 14.7 pounds per square inch absolute.

- (4) Motor vehicle.-- A self-propelled vehicle that is designed for use on a highway and is licensed under Chapter 20.
- (5) Person.-- An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.
- (6) Secretary.-- The Secretary of Revenue.
- (7) Supplier.-- A person who does one or more of the following:
- a. Acquires fuel for sale or delivery to a user-seller.
 - b. Maintains an inventory of fuel, part or all of which the person uses in a motor vehicle or sells to someone other than a user-seller for use in a motor vehicle.
 - b. Imports fuel into the State, by a means other than the usual tank or receptacle connected with the engine of a motor vehicle, for use in a motor vehicle owned or operated by that person.
- (8) Use.-- The term includes the receipt of fuel in the fuel supply tank of a motor vehicle and the receipt of fuel in a receptacle from which fuel is supplied to a motor vehicle.
- (9) User. A person who owns or operates a motor vehicle and who does not maintain storage facilities for fueling the motor vehicle.
- (10) User-seller.-- A bulk-user or a reseller.
- A bulk-user is a person who maintains storage facilities for fuel and who dispenses the fuel into the fuel supply tank of, or attached to, a motor vehicle owned or operated by that person.
- A reseller is a person who maintains storage facilities for fuel and who sells the fuel at retail or dispenses the fuel at a retail location into the fuel supply tank of, or attached to, a motor vehicle."

Sec. 6. G.S. 105-449.4 reads as rewritten:

"§ 105-449.4. Application for supplier's license.

~~To procure such license every supplier shall file with the Secretary an application upon oath in such form as the Secretary may prescribe setting forth the name and address of the supplier and such other information as the Secretary may require. To obtain a license as a supplier, an applicant must file an~~

1 application with the Secretary on a form provided by the
2 Secretary and file with the Secretary a bond or an irrevocable
3 letter of credit. An application shall include the applicant's
4 name and address and any other information required by the
5 Secretary. If the applicant is a corporation, the applicant must
6 either be incorporated in this State or be authorized to transact
7 business in this State. If the applicant is a limited
8 partnership, the applicant must either be formed in this State or
9 be authorized to transact business in this State. If the
10 applicant is an individual or a general partnership, the
11 applicant must designate an agent for service of process and give
12 the agent's name and address."

13 Sec. 7. G.S. 105-449.5 reads as rewritten:

14 "§ 105-449.5. Supplier to file bond.

15 A The Secretary may not issue a supplier's license ~~shall not~~
16 ~~be issued~~ to an applicant until the applicant has filed with the
17 Secretary a bond in the approximate sum of or an irrevocable
18 letter of credit. The amount of the bond or irrevocable letter
19 of credit may not exceed two times the applicant's average
20 expected monthly tax due to be paid by the supplier, liability
21 under this Article, as determined by the Secretary, but the
22 amount of the bond shall in no case and may not be less than five
23 hundred dollars (\$500.00). Such bond shall be in such form and
24 with such surety or sureties as may be required by the Secretary,
25 conditioned upon making proper reports and paying the tax
26 provided for in this Article, and otherwise complying with the
27 provisions of this Article. A supplier An applicant who is also
28 required to be bonded file a bond or an irrevocable letter of
29 credit under G.S. 105-433 as a distributor of motor fuels may
30 file a single bond, bond or irrevocable letter of credit under
31 either this section or under G.S. 105-433 for the combined amount
32 required under these sections, and amount. A bond filed under
33 this section shall be conditioned upon compliance with the
34 requirements of Article 36 and Article 36A of this Subchapter.
35 Subchapter, shall be payable to the Secretary, and shall be in
36 the form required by the Secretary.

37 A After filing a bond or an irrevocable letter of credit with
38 an application for a supplier's license, a supplier ~~required to~~
39 ~~file a bond under this section~~ shall, within 30 days after
40 receiving a notice from the Secretary, file an additional bond or
41 irrevocable letter of credit in the amount requested by the
42 Secretary. The amount of the initial bond or irrevocable letter
43 of credit and any additional bonds bond or irrevocable letter of

1 credit filed by the supplier, however, may not exceed the limits
2 set in this section."

3 Sec. 8. G.S. 105-449.7 reads as rewritten:

4 "§ 105-449.7. Issue of supplier's license.

5 ~~The application in proper form having been accepted for filing,~~
6 ~~and the other conditions and requirements of this Article having~~
7 ~~been complied with, the Secretary shall issue to such supplier a~~
8 ~~license and such license shall remain in full force and effect,~~
9 ~~unless cancelled as provided in this Article. Secretary shall~~
10 ~~issue a supplier's license to an applicant who meets the~~
11 ~~requirements of this Article. A supplier's license remains in~~
12 ~~effect until cancelled. A supplier is considered an agent and~~
13 ~~trust officer of the State for the collection of the tax imposed~~
14 ~~by this Article."~~

15 Sec. 9. G.S. 105-449.14 reads as rewritten:

16 "§ 105-449.14. Power of Secretary to cancel licenses.

17 ~~If a licensee shall at any time file a false report of any~~
18 ~~data or information required by this Article, or shall fail,~~
19 ~~refuse or neglect to file any report as required by this Article,~~
20 ~~or to pay the full amount of any tax required by this Article, or~~
21 ~~if a supplier fails to file an additional bond required under~~
22 ~~G.S. 105-449.5 or fails to keep accurate records of quantities of~~
23 ~~fuel received, produced, refined, manufactured, compounded, sold~~
24 ~~or used in this State, or if a user-seller fails to maintain~~
25 ~~accurately any required records, the Secretary may forthwith~~
26 ~~cancel his license and notify him in writing of such cancellation~~
27 ~~by registered mail sent to his last address appearing on the~~
28 ~~files of the Secretary.~~

29 The Secretary may cancel any license issued under this Article
30 upon the written request of the licensee. The Secretary may
31 summarily cancel the license of a supplier when the Secretary
32 finds that the supplier is incurring liability for the tax
33 imposed under this Article after failing to pay a tax when due
34 under this Article. In addition, the Secretary may cancel the
35 license of a supplier or any other licensee who commits one or
36 more of the acts listed in G.S. 105-449.34 after holding a
37 hearing on whether the license should be cancelled.

38 The Secretary shall send a supplier whose license is summarily
39 cancelled a notice of the cancellation and shall give the
40 supplier an opportunity to have a hearing on the cancellation
41 within 10 days after the cancellation. The Secretary shall give
42 a licensee whose license may be cancelled after a hearing at
43 least 10 days' written notice of the date, time, and place of the
44 hearing. A notice of a summary license cancellation and a notice

1 of hearing shall be sent by registered mail to the last known
2 address of the licensee.

3 When the Secretary cancels the license of a supplier, the
4 Secretary shall return the bond or irrevocable letter of credit
5 filed by the supplier if the supplier has paid all taxes and
6 penalties due under this Article."

7 Sec. 10. G.S. 105-449.17 reads as rewritten:

8 "~~§ 105-449.17. Certain exempt sales.~~ Exemption for fuel sold for
9 nonhighway use.

10 ~~Sales of fuels to a user-seller shall be exempt from the tax~~
11 ~~levied under the provisions of this Article when such user-seller~~
12 ~~purchases said fuel for nonhighway uses or for sale for~~
13 ~~nonhighway use and maintains storage facilities for such fuel~~
14 ~~separate and apart from facilities servicing motor vehicles,~~
15 ~~providing such storage facilities are plainly marked in such~~
16 ~~manner as the Secretary may prescribe to indicate that nontaxpaid~~
17 ~~fuel is contained therein. Suppliers shall make reports of such~~
18 ~~sales, in such form as the Secretary may require, each month on~~
19 ~~monthly tax report forms. Each user-seller shall maintain such~~
20 ~~records as the Secretary may prescribe of all nontaxpaid fuel~~
21 ~~purchased pursuant to this section. All records of nontaxable~~
22 ~~sales and purchases made pursuant to this section shall be~~
23 ~~subject to audit by deputies, employees or other agents of the~~
24 ~~Secretary. The tax imposed by this Article does not apply to fuel~~
25 ~~sold or delivered by a supplier to a user-seller when the fuel is~~
26 ~~for a purpose other than to propel a motor vehicle and the~~
27 ~~supplier dispenses the fuel into a storage facility of the user-~~
28 ~~seller that is marked with the phrase "For Nonhighway Use" or a~~
29 ~~similar phrase that clearly indicates the fuel is not to be used~~
30 ~~to propel a motor vehicle. A supplier is liable for the tax due~~
31 ~~on fuel dispensed into a storage facility of a user-seller that~~
32 ~~is not marked to indicate the fuel is to be used for a purpose~~
33 ~~other than to propel a motor vehicle. A user-seller is liable~~
34 ~~for the tax due on fuel dispensed by a supplier into a storage~~
35 ~~facility that is marked for nonhighway use and is subsequently~~
36 ~~used or sold for use to propel a motor vehicle."~~

37 Sec. 11. G.S. 105-449.20 reads as rewritten:

38 "~~§ 105-449.20. When Secretary may estimate fuel sold, delivered~~
39 ~~or used, tax liability of supplier or user-seller.~~

40 ~~Whenever any person shall neglect or refuse a supplier or a~~
41 ~~user-seller fails to make and file any a report for any calendar~~
42 ~~month as required by this Article or shall file an incorrect or~~
43 ~~fraudulent report, under G.S. 105-449.19 or 105-449.21 or files a~~
44 ~~false report under one of those statutes, the Secretary shall~~

1 determine, from any information obtainable, the number of gallons
2 of fuel with respect to which the ~~person has incurred liability~~
3 ~~under the special fuels tax laws of the State.~~ ~~supplier or user-~~
4 ~~seller owes tax under this Article.~~ ~~In all cases where a~~ ~~When a~~
5 ~~user-seller actually sells or uses an amount in addition to that~~
6 ~~reported more fuel than the user-seller reports to the Secretary~~
7 ~~as having been purchased from a supplier licensed under this~~
8 ~~Article proof of such additional sales or use shall constitute~~
9 ~~prima facie evidence that all fuel in excess of that so reported~~
10 ~~was acquired tax-free.~~ ~~supplier, the user-seller is presumed to~~
11 ~~have acquired the additional fuel tax-free to propel a motor~~
12 ~~vehicle."~~

13 Sec. 12. G.S. 105-449.34 reads as rewritten:

14 "§ 105-449.34. Acts and omissions declared to be misdemeanors;
15 penalties.

16 A person shall be who commits one or more of the following
17 acts is guilty of a misdemeanor if he wilfully violates any of
18 the provisions of this Article, a penalty for which is not
19 otherwise provided, or if he shall:

20 (1) Wilfully fail or refuse to pay the tax imposed by this
21 Article, or

22 (2) Engage in business in this State as a supplier or user-
23 seller without being the holder of an uncanceled license to
24 engage in such business, or

25 (3) Wilfully fail to make any of the reports required by this
26 Article, or

27 (4) Make any false statement in any application, report or
28 statement required by this Article, or

29 (5) Refuse to permit the Secretary or any deputy to examine
30 records as provided by this Article, or

31 (6) Fail to keep proper records of quantities of fuel
32 received, produced, refined, manufactured, compounded, sold,
33 used or delivered in this State as required by this Article, or

34 (7) Make any false statement on any delivery ticket or invoice
35 as to the quantity of fuel delivered, sold or used; or make any
36 false statement in connection with a report, or an application
37 for the refund of any moneys or taxes provided in this Article.
38 misdemeanor:

39 (1) Fails to obtain a license required by this Article.

40 (2) Wilfully fails to make a report required by this
41 Article.

42 (3) Wilfully fails to pay a tax when due under this
43 Article.

- (4) Makes a false statement in an application, a report, or a statement required under this Article.
- (5) Fails to keep records as required under this Article.
- (6) Refuses to allow the Secretary of Revenue or a representative of the Secretary of Revenue to examine the licensee's books and records concerning fuel.
- (7) Fails to disclose the correct amount of fuel sold or used in this State.
- (8) Fails to file an additional bond as required under this Article."

Sec. 13. G.S. 105-449.48 reads as rewritten:

"§ 105-449.48. Fees paid and civil penalties credited to Highway Fund.

All fees collected under this Article and all civil penalties collected under G.S. 105-449.52 shall be paid credited to the Highway Fund."

Sec. 14. G.S. 105-449.52 reads as rewritten:

~~"§ 105-449.52. Violators to pay penalty and furnish bond. Penalty for operating a motor vehicle without a registration card or an identification marker.~~

(a) Penalty.-- When any person is discovered in this State operating a vehicle in violation of the provisions of this Article, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle, until he shall pay to the Department of Revenue a penalty of seventy-five dollars (\$75.00). Such penalty may be paid to an agent of the Division of Motor Vehicles. All penalties received by the Department of Revenue under this section shall be paid into the Highway Fund. A motor carrier who operates in this State or causes to be operated in this State a motor vehicle that does not carry the registration card required by this Article or does not display an identification marker in accordance with this Article is subject to a civil penalty of seventy-five dollars (\$75.00). The penalty is payable to the Department of Revenue or the Division of Motor Vehicles. When a motor vehicle is found to be operating without a registration card or an identification marker, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

1 (b) Hearing.-- Any person denying his liability for such a
2 penalty imposed under this section may pay the same penalty under
3 protest. ~~He may protest and apply to the Department of Revenue~~
4 ~~for a hearing, and said hearing. Upon receiving a request for a~~
5 ~~hearing, the Secretary shall schedule a hearing shall be granted~~
6 ~~before a duly designated employee or agent of the Department~~
7 ~~within 30 days after receipt of the request for such hearing.~~
8 ~~request.~~ If after said the hearing the Department determines that
9 the person was not liable for the penalty, the amount collected
10 shall be ~~refunded to him.~~ refunded. If after said the hearing the
11 Department determines that the person was liable for said the
12 penalty, the person paying the penalty may bring an action in the
13 Superior Court of Wake County against the Secretary of Revenue
14 for refund of the penalty. No restraining order or injunction
15 shall issue from any court of the State to restrain or enjoin the
16 collection of the penalty or to permit the operation of said the
17 vehicle without payment of the penalty prescribed herein.
18 penalty.

19 ~~In addition, the Secretary may, if he deems it desirable or~~
20 ~~necessary to secure compliance with the provisions of this~~
21 ~~Article, require the furnishing of a bond to the Secretary in the~~
22 ~~amount of two hundred dollars (\$200.00), in such form and with~~
23 ~~such surety or sureties as he may prescribe, conditioned on~~
24 ~~registering or making an application for registration in~~
25 ~~accordance with this Article within 10 days and conditioned on~~
26 ~~the payment of any taxes found to be due pursuant to this~~
27 ~~Article. In cases where the Secretary shall require such bond, it~~
28 ~~shall be unlawful for anyone thereafter to operate said vehicle~~
29 ~~on the streets or highways of this State, except to remove it~~
30 ~~from the street or highway for purposes of parking or storing~~
31 ~~said vehicle, unless and until said bond is furnished.~~

32 ~~Whenever the Secretary is required to exercise his discretion~~
33 ~~under the provisions of this section, such discretion may be~~
34 ~~exercised by him or by a duly designated agent or employee of the~~
35 ~~Division of Motor Vehicles or the Department of Revenue."~~

36 Sec. 15. Notwithstanding the provisions of G.S.
37 105-433, the maximum bond or letter of credit that may be
38 required of a distributor under that section is forty thousand
39 dollars (\$40,000). Notwithstanding the provisions of G.S.
40 105-439.5, the maximum bond or letter of credit that may be
41 required of a supplier under that section is forty thousand
42 dollars (\$40,000). A distributor or supplier required to file a
43 bond or letter of credit under both sections may file a single

1 bond or letter of credit for the combined amount required up to a
2 maximum of eighty thousand dollars (\$80,000).

3 Sec. 16. Section 15 of this act is effective
4 retroactively as of January 1, 1991, and expires July 1, 1991.
5 The remainder of this act is effective upon ratification.



Explanation of Proposal 16

This proposal makes two types of changes to the motor fuel tax laws. First, it makes numerous unrelated changes to these laws to make them clearer and easier to administer. To accomplish this purpose, the proposal resolves current ambiguities and inequities in the law and makes uniform the provisions that apply to distributors of gasoline and suppliers of special fuel, which is primarily diesel fuel. Second, the proposal makes a temporary change to the bond amount required of distributors and suppliers of fuel so that the maximum bond is \$40,000 until July 1, 1991. The changes are described below in a section-by-section analysis. The affected statutes are arranged in numerical order in the proposal.

Section 1 allows the Secretary of Revenue to accept an irrevocable letter of credit in lieu of a bond from a distributor of motor fuel, clarifies that a corporation or a limited partnership must be authorized to do business in this State to be a distributor, requires an individual or a general partnership to designate an agent for service of process, and makes the language concerning a license application and bond of a distributor the same as for a supplier of special fuel. Allowance of an irrevocable letter of credit is intended to help a distributor who cannot obtain the bond that is currently required.

Section 2 gives the Secretary the discretion to waive the penalty for a late application for a refund of motor fuel or special fuel taxes rather than require an automatic reduction. The Secretary generally has the power to waive penalties concerning the late payment of taxes. The wording of the current statute on late refund applications requires an automatic reduction, however.

Section 3 adds failure to keep records to the list of actions for which criminal liability attaches and for which a license can be revoked, inserts a requirement of wilfulness in failing to file a report or pay tax when due, specifies the amount of notice that must be given before the Secretary cancels a license of a distributor of motor fuels, and conforms the language concerning cancellation to that used for a supplier. The changes in the amount of notice required are made to ensure due process.

Section 4 clarifies that a refund is available only for tax paid on fuel used in the previous year. This is the clear intent of the statute but taxpayers have argued that G.S. 105-446 entitles them to a refund of taxes paid for any year. The question arises

only when the Department assesses a taxpayer for the excise tax that was not paid but should have been paid on fuel.

Section 5 puts the definitions in Article 36A in alphabetical order, deletes the requirement that a bulk-user store at least 100 gallons of fuel, and clarifies that a motor vehicle is a licensed motor vehicle under Chapter 20. Under current law, it is not clear how a person who stores less than 100 gallons of fuel for the person's use should be treated.

Section 6 clarifies that a corporation or a limited partnership must be authorized to do business in this State before it can be licensed as a supplier of fuel and requires an individual or a general partnership to designate an agent for service of process.

Section 7 allows the Secretary to accept an irrevocable letter of credit in lieu of a bond from a supplier of special fuel, changes the amount of a required bond or irrevocable letter of credit so that the amount does not exceed two times the applicant's expected liability rather than equal two times the applicant's expected liability, and conforms the language to that applicable to a distributor of motor fuel.

Section 8 provides that a supplier is an agent of the State in collecting the special fuel tax. Distributors are declared agents of the State in G.S. 105-444.

Section 9 specifies the amount of notice that must be given before the Secretary cancels a license of a supplier of special fuel and conforms the reasons for which a license may be cancelled to the reasons for cancelling a license of a distributor of motor fuel. The changes made by this section parallel the changes made by Section 3 of the proposal.

Section 10 clarifies the liability of a supplier and a user-seller for any tax due on fuel sold by the supplier to the user-seller. It makes clear that a supplier is liable for taxes due on fuel sold to a user-seller unless the fuel is dispensed into a tank that is marked "For Nonhighway Use" and that a user-seller is liable for taxes due on fuel that is dispensed into a tank marked "For Nonhighway Use" but is used for a highway purpose.

Section 11 clarifies that a user-seller who uses more fuel than the user-seller reports as having acquired from a supplier is presumed to have acquired the extra fuel tax-free for use in a licensed motor vehicle. The current law states that the user-seller is presumed to have acquired the extra fuel tax-free but does not go the extra step and presume that the fuel was acquired for a taxable purpose, thereby creating a presumption that the fuel is taxable.

Section 12 accompanies the changes made by Sections 3 and 9 of the proposal. It makes the prohibited acts for suppliers of special fuel parallel those for distributors of gasoline.

Sections 13 and 14 allow a truck that is cited for not having a registration card or identification marker to continue to operate if payment of the \$75 penalty is not in jeopardy. Current law prohibits further operation of the vehicle until payment of the \$75 penalty regardless whether payment of the penalty is in jeopardy or the circumstances of the vehicle. The statement that penalties are to be credited to the Highway Fund is transferred by Section 13 to G.S. 105-449.48.

Section 15 establishes a temporary ceiling of \$40,000 for a bond or letter of credit required of a distributor or supplier. The temporary ceiling applies until July 1, 1991. The 1990 General Assembly changed the maximum amount of the bond from \$40,000 to two times the distributor's or supplier's expected tax liability, effective January 1, 1991. Many distributors and suppliers who have a history of timely tax payments are having difficulty obtaining bonds at the higher amounts.

Recognizing the severity of this problem, the Committee recommends postponing the effective date of the change in the required bond from January 1, 1991 until July 1, 1991. The proposal accomplishes this postponement by making the bond provision retroactive to January 1, 1991. The Committee anticipates that a bill modifying the bond provisions will be introduced in the 1991 Session, to become effective July 1, 1991.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 17 (91-LJ-11)
THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Diesel Annual Report/ Conforming Changes. (Public)

Sponsors: Sen. Winner, Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE ANNUAL SPECIAL FUEL REPORTS DUE THE SAME TIME AS ANNUAL MOTOR CARRIER REPORTS AND TO MAKE CONFORMING CHANGES TO THE MOTOR CARRIER LAWS TO FACILITATE ANNUAL MOTOR CARRIER REPORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.10 reads as rewritten:

"§ 105-449.10. ~~Records and reports required of user-seller or user. Reports and payment of tax by user.~~

(a) Report.-- Each user-seller or user required to be licensed under this Article shall keep records and make reports to the Secretary in accordance with regulations adopted by the Secretary. The records and reports shall show all purchases, sales, deliveries, and use of fuel by the user-seller or licensed user. A licensed user ~~that is not authorized by this subsection to file an annual report shall file a quarterly report on or before the last day of the month immediately following the end of the quarter. A licensed user that uses fuel only in a motor vehicle operated in this State or that has been granted permission to file an annual report under G.S. 105-449.45 shall file an annual report for a calendar year by January 1 following the end of the year. A user-seller shall file a report as required by G.S. 105-449.21.~~ shall file a report on a quarterly

1 basis unless the Secretary has given the licensed user permission
2 to file a report on an annual basis. A quarterly report covers a
3 calendar quarter and is due by the last day in April, July,
4 October, and January.

5 The Secretary may authorize a licensed user to file an annual
6 report if either of the following applies:

7 (1) The licensed user is not a motor carrier under
8 Article 36B of this Chapter.

9 (2) The licensed user is a motor carrier under Article
10 36B of this Chapter but is not required to file a
11 quarterly report under G.S. 105-449.45.

12 An annual report covers a fiscal year beginning on July 1 and
13 ending on the following June 30 and is due by July 31 after the
14 end of a fiscal year. To file an annual report, a licensed user
15 must apply to the Secretary for permission to file on an annual
16 basis. An application must be submitted by the date set by the
17 Secretary. Once granted permission, a licensed user may continue
18 to file an annual report until notified by the Secretary to file
19 a quarterly report.

20 (b) Payment.-- A user who acquires nontaxpaid fuel is liable
21 for shall pay the tax levied by this Article on any nontaxpaid
22 fuel acquired by him. the fuel. A licensed user shall pay the
23 tax due on nontaxpaid fuel acquired during a reporting period
24 when filing a report for that period. An unlicensed user who
25 acquires nontaxpaid fuel shall report the fuel and pay the tax
26 due on the fuel in the same manner as a licensed user."

27 Sec. 2. G.S. 105-449.37(b) reads as rewritten:

28 "(b) Liability.-- A motor carrier who operates on one or more
29 days of a ~~quarter~~ reporting period is liable for the tax imposed
30 by this Article for that ~~quarter~~ reporting period and is entitled
31 to the credits allowed for that ~~quarter~~ reporting period."

32 Sec. 3. G.S. 105-449.39 reads as rewritten:

33 "§ 105-449.39. Credit for payment of motor fuel tax.

34 Every motor carrier subject to the tax levied by this Article
35 is entitled to a credit for tax paid by the carrier on fuel
36 purchased in the ~~State~~ State. A motor carrier who files a
37 quarterly report is entitled to a credit at a rate equal to the
38 flat cents-per-gallon rate plus the variable cents-per-gallon
39 rate of tax in effect during the quarter for which the credit is
40 claimed. A motor carrier who files an annual report is entitled
41 to a credit at a rate equal to the flat cents-per-gallon rate
42 plus the average of the two variable cents-per-gallon rates of
43 tax in effect during the year for which the credit is claimed.
44 To obtain this a credit, the motor carrier must furnish evidence

1 satisfactory to the Secretary that the tax for which the credit
2 is claimed has been paid.

3 If the amount of a credit to which a motor carrier is entitled
4 for a quarter reporting period exceeds the motor carrier's
5 liability for that quarter, reporting period, the excess may, in
6 accordance with rules adopted by the Secretary, be refunded to
7 the motor carrier or carried forward and applied to the motor
8 carrier's tax liability for another quarter, reporting period.
9 The Secretary may not allow a refund without auditing the motor
10 carrier's records unless the motor carrier:

11 (1) Has furnished a bond under G.S. 105-449.40; or

12 (2) Has complied with this Subchapter and the rules
13 adopted under the Subchapter for at least a one-
14 year period preceding the date the application for
15 a refund is filed."

16 Sec. 4. G.S. 105-449.42 reads as rewritten:

17 "§ 105-449.42. Payment of tax.

18 ~~For the purposes of making payment of taxes pursuant to this~~
19 ~~Article and making reports pursuant to this Article, the year is~~
20 ~~divided into four quarters of three consecutive months each, and~~
21 ~~the first quarter shall consist of the months of January,~~
22 ~~February and March. The tax herein imposed shall be paid by each~~
23 ~~motor carrier to the Secretary on or before the last day of the~~
24 ~~month immediately following the quarter with respect to which tax~~
25 ~~liability hereunder accrues and The tax levied by this Article~~
26 ~~is due when a motor carrier files a quarterly or an annual report~~
27 ~~under G.S. 105-449.45. The amount of tax due shall be calculated~~
28 ~~upon the amount of gasoline or other motor fuel used by the motor~~
29 ~~carrier in its operations within this State by each such carrier~~
30 ~~during the quarter ending with the last day of the preceding~~
31 ~~month. reporting period covered by the report."~~

32 Sec. 5. G.S. 105-449.49 reads as rewritten:

33 "§ 105-449.49. Temporary permits.

34 Upon application to the Secretary and payment of a fee of
35 twenty-five dollars (\$25.00), a motor carrier may obtain a
36 temporary permit authorizing the carrier to operate a vehicle in
37 the State without registering the vehicle in accordance with G.S.
38 105-449.47 for not more than 20 days. A motor carrier to whom a
39 temporary permit has been issued may elect not to report its
40 operation of the vehicle during the 20-day period, ~~as otherwise~~
41 ~~required by G.S. 105-449.45, period.~~ A motor carrier who files a
42 report for a quarter reporting period in which the carrier paid a
43 temporary permit fee may claim a credit for the amount of the
44 fee. A motor carrier whose operations are exclusively intrastate

1 may obtain a refund of the fee by filing a report for the ~~quarter~~
2 reporting period in which the fee was paid."
3 Sec. 6. This act is effective upon ratification.

Explanation of Proposal 17

This proposal resolves a problem created by House Bill 603, Chapter 1050, of the 1989 Session (Reg. Sess. 1990). That act allowed a motor carrier whose annual liability for the road tax is less than \$200.00 to file an annual report rather than a quarterly report. The allowed annual report covers a fiscal year rather than a calendar year.

Chapter 1050 also allowed a user of diesel fuel to file a report on an annual basis if the user is allowed to file an annual road tax report. The act set the filing period for the diesel fuel report on a calendar year basis, however, rather than on a fiscal year basis.

This proposal corrects the discrepancy in filing periods created by Chapter 1050 and makes several technical changes. It changes the filing period for annual diesel fuel reports from a calendar year to a fiscal year so that both the annual road tax report and the diesel fuel tax report are due at the same time and it makes conforming changes to the road tax statutes to reflect the filing of an annual report by some motor carriers.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

D

PROPOSAL 18 (91-LC-010(8.24))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Merchants' Sales Tax Discount.

(Public)

Sponsors: Representatives Lilley; Abernethy, Brawley.

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR COLLECTING
3 STATE SALES AND USE TAXES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-164.21 is reenacted and rewritten
6 to read:
7 "§ 105-164.21. Discount for collecting and paying taxes when
8 due.
9 (a) Amount. Except as provided in subsection (b), a retailer
10 who pays the retail sales or use tax imposed by this Article may
11 deduct from the amount of the tax paid a discount of three
12 percent (3%) of the first one thousand dollars (\$1,000) of tax
13 paid per month and one percent (1%) of the remaining tax paid per
14 month up to the following maximum discounts:
15 (1) One hundred dollars (\$100.00) per month for each
16 place of business at a separate location.
17 (2) For taxpayers who are required to report on a
18 semimonthly basis, four thousand dollars (\$4,000)
19 per semimonthly period for each retailer group.
20 (3) For taxpayers who are not required to report on a
21 semimonthly basis, eight thousand dollars (\$8,000)
22 per month for each retailer group.
23 The discount for each location may be deducted only from the
24 tax paid with regard to that location. For the purposes of this

1 section, a retailer group includes all retail establishments that
2 have one of the following relationships with one another: (i) one
3 corporation owns, directly or indirectly, at least eighty percent
4 (80%) of the voting stock of the others; (ii) at least eighty
5 percent (80%) of the voting stock of the corporations is owned,
6 directly or indirectly, by the same interests; or (iii) in the
7 case of establishments that are not incorporated, the
8 establishments are under the same general management,
9 supervision, or ownership.

10 (b) Restrictions. The Secretary may deny a retailer the
11 benefits of this section for failure to pay the full tax when due
12 as well as in cases of fraud, evasion, or failure to keep
13 accurate and clear records as required by this Article. In order
14 to receive the discount provided in this section, a retailer must
15 deduct the discount when it remits the tax to the Department of
16 Revenue. A utility may not deduct the discount provided in this
17 section on sales of electricity, piped natural gas, or telephone
18 service."

19 Sec. 2. G.S. 105-474 reads as rewritten:

20 ~~"§ 105-474. Definitions; construction of Article; remedies and~~
21 ~~penalties. Administration and construction of Article.~~

22 This Article shall be harmonized with the North Carolina Sales
23 and Use Tax Act to the extent practical. The discount provided
24 in G.S. 105-164.21 does not apply to this Article. The remaining
25 provisions of Articles 5 and 9 of this Chapter apply to this
26 Article to the extent they are consistent with this Article.

27 ~~The definitions set forth in G.S. 105-164.3 shall apply to this~~
28 ~~Article insofar as such definitions are not inconsistent with the~~
29 ~~provisions of this Article, and all other provisions of Article 5~~
30 ~~and of Article 9 of Subchapter 1, Chapter 105 of the General~~
31 ~~Statutes, as the same relate to the North Carolina Sales and Use~~
32 ~~Tax Act shall be applicable to this Article unless such~~
33 ~~provisions are inconsistent with the provisions of this Article.~~
34 ~~The administrative interpretations made by the Secretary of~~
35 ~~Revenue with respect to the North Carolina Sales and Use Tax Act,~~
36 ~~to the extent not inconsistent with the provisions of this~~
37 ~~Article, may be uniformly applied in the construction and~~
38 ~~interpretation of this Article. It is the intention of this~~
39 ~~Article that the provisions of this Article and the provisions of~~
40 ~~the North Carolina Sales and Use Tax Act, insofar as practicable,~~
41 ~~shall be harmonized.~~

42 ~~The provisions with respect to remedies and penalties~~
43 ~~applicable to the North Carolina Sales and Use Tax Act, as~~
44 ~~contained in Article 5 and Article 9, Subchapter 1, Chapter 105~~

~~1 of the General Statutes, shall be applicable in like manner to~~
~~2 the tax authorized to be levied and collected under this Article,~~
~~3 to the extent that the same are not inconsistent with the~~
~~4 provisions of this Article."~~

5 Sec. 3. The first sentence of Section 10 of Chapter
6 1096 of the 1967 Session Laws is amended by adding after the word
7 "Act" the phrase ", other than G.S. 105-164.21,".

8 Sec. 4. This act becomes effective April 1, 1992, and
9 applies to returns filed on or after that date.

Explanation of Proposal 18

Until 1987, North Carolina allowed a retailer who collected sales and use taxes to retain a discount of three percent of the State and local taxes collected and remitted to the State. This allowance, known as the merchant's discount, was repealed by the School Facilities Finance Act of 1987 as part of a tax package that repealed the property tax on inventories and raised the corporate income tax from six percent to seven percent. In 1988, Senate Bill 1594 was introduced to restore a merchant's discount of three percent of the State (but not local) sales taxes collected, up to a maximum discount of two hundred dollars per month. The bill, which would have cost the State nearly thirty million dollars per year, passed the Senate but stalled in the House of Representatives.

After the 1988 Session, the 1987-88 Revenue Laws Study Committee heard from business organizations on this issue. Among the groups represented were retail merchants, independent businesses, automobile dealers, farm and power equipment dealers, convenience stores, petroleum marketers, restaurants, tire dealers, automotive wholesalers, and lumber and building material dealers. These groups pointed out that, unlike withholding payroll dollars, when a retailer collects and remits sales tax, it is handling the public's money as a service to the State. According to the groups who spoke to the Committee in 1988, some sort of discount is needed to help offset the significant costs to retailers of collecting and remitting the tax.

The 1987-88 Study Committee compared the treatment of sales tax discounts in other states and reviewed the cost of various discount rates and caps. The Committee concluded that a new discount would be desirable if it could be structured in such a way that the allowance to large merchants would be limited. An additional advantage of such a limitation is that it would be more reasonable in light of the State's budget needs. Finally, the Committee felt that the pressing needs of local government units in the State dictated that the local tax base not be eroded. After reviewing a number of options for allowing a discount against the State tax, the Committee recommended a merchant's discount that combined these considerations. The proposal was introduced in both the House of Representatives and the Senate in 1989 but did not pass.

The 1989-90 Revenue Laws Study Committee has renewed its recommendation of the merchant's discount in Legislative Proposal 18. This proposal allows a discount

against State sales and use tax collections of three percent of the first \$1,000 of tax collected each month and one percent of the remaining tax collected each month, with a cap of one hundred dollars per location each month and a cap of \$8,000 per retailer group each month. If a taxpayer files on a semimonthly basis, the retailer group maximum is calculated as \$4,000 each semimonthly period rather than \$8,000 each month. For the purpose of calculating the maximum, a retailer group includes (i) all corporate affiliates, parents, and subsidiaries that have 80% or more common stock ownership and/or (ii) all non-corporate businesses that are under the same general management, supervision, or ownership. The discount will not apply to local sales and use taxes.

The bill is to become effective April 1, 1992, and will apply to sales tax returns filed on or after that date.

Explanation of Proposal:

Would allow merchants remitting the state sales tax to retain 3% of the *first \$1,000 of tax collected* and 1% of the *remainder*, provided that the merchant remitted the full tax on a timely basis. The amount retained would be *limited to \$100 per month per business location and \$8,000 per month for each retail group*.

The maximum monthly discount for a business location may only be deducted from the taxes remitted at a specific location. For purposes of the annual discount limit, the proposal contains technical language defining the term "retail group".

Effective Date:

Taxes remitted on or after April 1, 1992.

Fiscal Effect:

- (1) Based on data provided by the Department of Revenue, the bill would reduce state General Fund tax revenue as follows:

1991-92	\$ 5.0 million
1992-93	20.4
1993-94	20.8
1994-95	21.3

The estimate may be adjusted downward later when a review of the data on the impact of the 1989 legislation converting the motor vehicle sales tax to a highway use tax (collected during the vehicle registration process) is completed.

- (2) The \$100 per month limit is equivalent to monthly taxable sales volume of \$266,667 and monthly state sales tax liability of \$8,000.
- (3) A 1988 tabulation of monthly sales and use tax returns by the Department of Revenue indicated that of the total active accounts remitting on a monthly or semimonthly basis, approximately 98% had monthly sales volume below the level at which the discount would equal \$100.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 19 (91-LCX-009B(10.1))
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Simplify Business License Tax. (Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO SIMPLIFY LICENSE TAX FILING FOR RETAILERS AND
3 WHOLESALEERS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-164.16(b) reads as rewritten:
6 "(b) General Reporting Periods. -- Returns of taxpayers who are
7 required by this subsection to report on a monthly or quarterly
8 basis are due within 15 days after the end of each monthly or
9 quarterly period. Returns of taxpayers who are required to report
10 on a semimonthly basis are due within 10 days after the end of
11 each semimonthly period.
12 A taxpayer who is consistently liable for less than ~~twenty-five~~
13 ~~dollars (\$25.00)~~ fifty dollars (\$50.00) a month in State and
14 local sales and use taxes may, with the approval of the
15 Secretary, file a return on a quarterly basis. A taxpayer who is
16 consistently liable for at least twenty thousand dollars
17 (\$20,000) a month in State and local sales and use taxes shall,
18 when directed to do so by the Secretary, file a return on a
19 semimonthly basis. All other taxpayers shall file a return on a
20 monthly basis. Quarterly reporting periods end on the last day of
21 March, June, September, and December; monthly reporting periods
22 end on the last day of the month; and semimonthly reporting

1 periods end on the 15th of each month and the last day of each
2 month.

3 The Secretary shall monitor the amount of tax remitted by a
4 taxpayer and shall direct a taxpayer who consistently remits at
5 least twenty thousand dollars (\$20,000) each month to file a
6 return on a semimonthly basis. In determining the amount of tax
7 due from a taxpayer for a reporting period the Secretary shall
8 consider the total amount due from all places of business owned
9 or operated by the same person as the amount due from that
10 person.

11 A taxpayer who is directed to remit sales and use taxes on a
12 semimonthly basis but who is unable to gather the information
13 required to submit a complete return for either the first
14 reporting period or both the first and second semimonthly
15 reporting periods may, upon written authorization by the
16 Secretary, file an estimated return for that first reporting
17 period or both periods on the basis prescribed by the Secretary.
18 Once a taxpayer is authorized to file an estimated return for the
19 first period or both periods, the taxpayer may continue to file
20 an estimated return for the first or both periods until the
21 Secretary, by written notification, revokes the taxpayer's
22 authorization to do so. When filing a return for the second
23 semimonthly reporting period, a taxpayer who files an estimated
24 return for the first period but not both periods shall remit the
25 amount of tax due for both the first and second reporting
26 periods, less the amount he remitted with his estimated return.

27 A taxpayer who files an estimated return for both periods is
28 considered to have been granted an extension for both the first
29 and second reporting periods. Notwithstanding G.S. 105-164.19, if
30 a taxpayer who files an estimated return for both periods files a
31 reconciling return for those periods within ten days of the due
32 date of the return for the second period and any underpayment of
33 estimated taxes remitted with the reconciling return is less than
34 ten percent (10%) of the amount of taxes due for both the first
35 and second reporting periods, no interest shall be charged.
36 Otherwise, a taxpayer who files an estimated return for both
37 periods shall be charged interest at the statutory rate from the
38 due date of the return for the first reporting period to the date
39 the reconciling return is filed."

40 Sec. 2. G.S. 105-102.5 reads as rewritten:

41 "§ 105-102.5. General business Merchant's privilege license.

42 (a) License. Every retailer or wholesale merchant (i) engaged
43 in business selling or leasing motor vehicles, motor fuel, or
44 special fuel or (ii) engaged in a business required to be

1 licensed under G.S. 105-164.4(c) or 105-164.6(f) of the Sales and
2 Use Tax Act shall obtain from the Secretary of Revenue a
3 merchant's privilege license for the privilege of engaging in
4 business as a retailer or a wholesale merchant. The tax for each
5 merchant's privilege license is fifty dollars (\$50.00) and one
6 license shall be obtained for each location at which the retailer
7 or wholesale merchant is engaged in business. The retailer or
8 wholesale merchant shall keep the merchant's privilege license
9 displayed conspicuously at the location for which it was issued.

10 (b) Exemptions. This section does not apply to:

11 (1) A distributor or operator of merchandising
12 dispensers licensed under G.S. 105-65.1.

13 (2) A specialty market vendor, a peddler, or an
14 itinerant merchant as defined in G.S. 105-53.

15 (c) Local Licenses. Counties may levy a license tax of up to
16 thirty-five dollars (\$35.00) on a wholesale merchant licensed
17 under this section. Counties may not levy a license tax on a
18 retailer licensed under this section unless the retailer is also
19 a wholesale merchant licensed under this section. Municipalities
20 may levy a license tax on retailers and wholesale merchants
21 licensed under this section as provided in G.S. 105-102.6.

22 ~~(a) Every person, firm, or corporation engaging in any one of~~
23 ~~the businesses listed in subsection (b) of this section shall~~
24 ~~apply for and procure from the Secretary of Revenue a State~~
25 ~~"general business license" for the transaction of such business.~~
26 ~~The tax for each license shall be fifty dollars (\$50.00) and one~~
27 ~~license shall be obtained for each location at which any of the~~
28 ~~businesses enumerated in subsection (b) is engaged in; however,~~
29 ~~only one general business license is required for any one~~
30 ~~location regardless of how many of the enumerated businesses are~~
31 ~~being engaged in at that location by the person, firm, or~~
32 ~~corporation.~~

33 ~~(b) The general business license shall be procured and the tax~~
34 ~~paid by the person, firm, or corporation engaged in any one or~~
35 ~~more of the following business activities:~~

36 ~~(1) Selling, leasing, furnishing, and/or distributing~~
37 ~~movies, including video movies, for use in places~~
38 ~~where no admission fee is charged or in schools,~~
39 ~~public or private, or other institutions of~~
40 ~~learning in this State.~~

41 ~~(2) Selling bicycles, bicycle supplies, or accessories.~~

42 ~~(3) Selling or renting office machines, home~~
43 ~~appliances, or burglar alarms, smoke alarms, or~~
44 ~~other warning devices. As used in this~~

subdivision, the term "office machine" includes cash registers, typewriters, word processing equipment, addressograph machines, adding machines, bookkeeping machines, calculators, billing machines, check writing machines, copying machines, dictating equipment, and data processing equipment. As used in this subdivision, the term "home appliances" includes washing machines, clothes dryers, refrigerators, freezers, vacuum cleaners, air conditioning units other than permanently installed units using internal ductwork, and sewing machines.

- (4) Operating a campground, trailer park, tent camping area, or similar place for profit, advertising in any manner for transient patronage, or soliciting such business, regardless of whether the rental to patrons is on a daily, weekly, biweekly or monthly basis.
- (5) Operating billiard or pool tables, whether operated by slot or otherwise.
- (6) Operating a bowling alley, or alleys of like kind.
- (7) Selling sandwiches (such term not to be construed to include crackers or cookies in combination with any food filling) in drug stores or any other stands or places not operating as a restaurant; operating, maintaining or placing on location fewer than five cigarette or other tobacco products dispensers, soft drink dispensers, food or other merchandising dispensers, or weighing machines; retailing soft drinks; or retailing or jobbing cigarettes or any other tobacco products.
- (8) Operating a bagatelle table, merry-go-round, other riding device, hobbyhorse, switchback railway, shooting gallery, swimming pool, skating rink, other amusement of a like kind, or a place for other games or play with or without name (unless used solely and exclusively for private amusement or exercise) at a permanent location.
- (9) Selling, offering, ordering for sale, repairing, or servicing pianos, organs, record players, records, tape players, tape cartridges designed for use in tape players, television sets, television accessories or repair parts, radios, or radio

accessories or repair parts, including radios designed for exclusive use in motor vehicles.

~~(10) Manufacturing ice cream using freezer equipment and selling the ice cream at retail; and selling at retail ice cream purchased from a manufacturer other than a manufacturer who has paid the tax imposed in G.S. 105-97(a). For the purpose of this subdivision, "ice cream" means ice cream, frozen custards, sherbets, water ices, yogurt, and/or similar frozen products.~~

~~(c) Where applicable, the chain store license tax levied in G.S. 105-98 shall be in addition to the general business license tax levied in subsection (a).~~

~~(d) Exemptions.~~

~~(1) A person, firm, or corporation required to be licensed under G.S. 105-36.1, 105-37, 105-62, 105-65.1, 105-74, 105-85, 105-89, or 105-89.1 is not required to procure for the same location the general business license imposed by this section.~~

~~(2) The tax levied on the businesses described in subdivisions (5) and (6) of subsection (b) of this section does not apply to fraternal organizations having a national charter, American Legion Posts, posts or other local organizations of other veterans' organizations chartered by Congress or organized and operating on a statewide or nationwide basis, Young Men's Christian Associations, Young Women's Christian Associations, or nonstock, nonprofit charitable recreational corporations, foundations, or centers to which a municipality or county contributes any portion of the operating expense.~~

~~(3) The tax levied on the businesses described in subdivision (7) of subsection (b) of this section does not apply to the sale, through dispensers or otherwise, of milk, milk drinks, dairy products, or newspapers, or to dispensers dispensing merchandise for five cents (5¢) or less.~~

~~(4) The tax levied on the businesses described in subdivision (8) of subsection (b) of this section does not apply to machines and devices licensed under G.S. 105-65 or G.S. 105-66.1. An organization obtaining a license under G.S. 14-309.7 is not required to obtain a license under~~

subdivision (8) of subsection (b) of this section, but is subject to subsection (e) of this section as if a State license were required.

(5) A person, firm, or corporation licensed under this section to conduct a business described in subdivision (9) of subsection (b) is not required to procure a license under G.S. 105-89 by reason of being engaged in the business of selling, installing, or servicing motor vehicle radios.

(e) Local Licenses. For the businesses described under subdivisions (1) through (4), (7), (9), and (10) of subsection (b) of this section, counties may not levy a license tax. For the businesses described under subdivision (5) of this section, counties may levy on each business located outside of cities a license tax not in excess of twenty-five dollars (\$25.00). For the businesses described under subdivision (6), counties may levy on each business located outside of cities a license tax not in excess of ten dollars (\$10.00) per alley kept or maintained. For the businesses described under subdivision (8), counties may levy on each business located outside of cities a license tax not in excess of twenty-five dollars (\$25.00).

Cities may not levy a license tax on the businesses described under subdivision (3) of subsection (b) of this section. Cities may levy on each of the businesses described in subdivisions (1), (2), (5), and (8) a license tax not in excess of twenty-five dollars (\$25.00); on the businesses described in subdivision (4), cities may levy a license tax not in excess of twelve dollars and fifty cents (\$12.50); on the businesses described in subdivision (6), cities may levy a license tax not in excess of ten dollars (\$10.00) per alley kept or maintained; on the businesses described in subdivision (9), cities may levy a license tax not in excess of five dollars (\$5.00); on the businesses described in subdivision (7), cities may levy a license tax not in excess of four dollars (\$4.00); and on the businesses described in subdivision (10), cities may levy a license tax not in excess of two dollars and fifty cents (\$2.50).

Counties and cities may not levy a license tax under this section on a person, firm, or corporation required to be licensed under G.S. 105-65.1."

Sec. 3. Article 2 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-102.5 a new section to read:

"§ 105-102.6 Municipal merchant's privilege license.

(a) License Tax. A municipality may levy a license tax on a retailer or wholesale merchant required to be licensed under G.S. 105-102.5. The tax shall be measured on the the gross receipts derived during the preceding year from the retail and wholesale business conducted in the municipality. The municipality may provide that the preceding year is the preceding calendar year, the license holder's preceding income tax year, or another 12-month period preceding the license year. The license tax shall be at a rate of up to fifty cents (50¢) for every one thousand dollars (\$1,000) of gross receipts, subject to a minimum tax of up to thirty dollars (\$30.00) and a maximum tax of up to two thousand dollars (\$2,000).

(b) Scope. If a person operates at the same location both a wholesale or retail business and another business not required to be licensed under G.S. 105-102.5, this section applies only to the gross receipts derived from the retail or wholesale business. The tax applies to the entire gross receipts derived from the retail or wholesale business, including the receipts derived from the sale of items exempt from sales and use tax. Except as otherwise authorized in this Article, a municipality may not levy a license tax on:

(1) A retailer or wholesale merchant that is exempt from federal income tax under section 501 of the Code.

(2) The gross receipts derived from wholesale sales of alcoholic beverages.

(c) Multiple Taxation Prohibited. A retailer or wholesale merchant engaged in business in more than one municipality is not subject to more than one municipal tax on the same gross receipts. If a taxpayer has gross receipts derived from one or more places of business in municipalities in this State, only a municipality in which a place of business is located may tax the gross receipts derived from that place of business. If a taxpayer has gross receipts derived from a place of business not located in a municipality in this State, each municipality may tax the gross receipts to the extent they are derived from business conducted within that municipality. As used in this subsection, the term 'place of business' means a fixed place at which the retailer or wholesale merchant maintains the business."

Sec. 4. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-33.1 Definitions.

The following definitions apply in this Article:

(1) Code. The Internal Revenue Code as enacted as of January 1, 1991, including any provisions enacted as of that date which become effective either before or after that date.

(2) Motor fuel. Defined in G.S. 105-430.

(3) Municipality. A municipal corporation organized under the laws of this State.

(4) Person. An individual, a firm, a partnership, an association, a corporation, or another organization or group acting as a unit.

(5) Retailer. Defined in G.S. 105-164.3.

(6) Secretary. The Secretary of Revenue.

(7) Special fuel. Fuel as defined in G.S. 105-449.2.

(8) Wholesale merchant. Defined in G.S. 105-164.3."

Sec. 5. G.S. 105-46, 105-51.1, 105-61, 105-62, 105-70, 105-74, 105-80, 105-85, 105-89, 105-89.1, 105-97, 105-98, 105-99, and 105-102.1 are repealed.

Sec. 6. G.S. 105-164.5 reads as rewritten:

"§ 105-164.5. Imposition of tax; wholesale merchant.

There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person who engages in the business of selling tangible personal property at wholesale in this State ~~as defined herein, the same to be collected and the amount to be determined in the following manner, to wit: as follows:~~

~~(1) Every wholesale merchant as defined in this Article shall apply for and obtain an annual license and pay tax therefor of ten dollars (\$10.00). Such annual license shall be paid for in advance within the first 15 days of July in each year or, in the case of a new business, within 15 days after business is commenced. Manufacturers making wholesale sales, as defined in this Article, of their own manufactured products, directly and exclusively from the place where such articles of tangible personal property are manufactured, shall not be required to obtain an annual wholesale license.~~

(1) Every wholesale merchant is subject to the license requirement in G.S. 105-164.4(c).

(2) The sale of any tangible personal property by any wholesale merchant to anyone other than to a registered retailer, wholesale merchant or nonresident retail or wholesale merchant as defined for resale shall be taxable at the rate of tax provided in this Article upon the retail sale of tangible personal property.

(3) The sale of any tangible personal property by any wholesale merchant to a nonresident retail or wholesale merchant must be in ~~strict~~ compliance with ~~such~~ regulations ~~as may be promulgated by the Secretary and which are applicable to such sales~~. Any sale which does not conform to such regulations shall be taxable at the rate of tax provided in this Article upon the retail sale of tangible personal property.

(4) Every wholesale merchant who sells tangible personal property to retailers or nonresident retail or wholesale merchants for resale shall deliver to such customer a bill of sale for each sale of such tangible personal property whether sold for cash or on credit and shall make and retain a duplicate or carbon copy of each such bill of sale and shall keep on file all such duplicate bills of sale for at least three years from the date of sale. Failure to comply with the provisions of this subsection shall subject the wholesale merchant to liability for tax upon such sales at the rate of tax levied in this Article upon retail sales.

(5) The tax levied is and shall be in addition to all other taxes whether levied in the form of excise, license or privilege or other taxes."

Sec. 7. G.S. 105-36 reads as rewritten:

"§ 105-36. Amusements -- Manufacturing, ~~selling~~, leasing, or distributing moving picture films.

Every ~~person, firm, or corporation~~ person engaged in the business of manufacturing, ~~selling~~, leasing, furnishing and/or distributing films to be used in this State ~~in moving picture theatres or other places~~ in places, other than institutions of learning, at which an admission fee is charged shall apply for and obtain from the Secretary of Revenue a statewide license for the privilege of engaging in such business in this State, and shall pay for such license a tax of six hundred twenty-five dollars (\$625.00).

Every person engaged in the business of leasing, furnishing, or distributing movies, including video cassette movies, for use in this State in institutions of learning at which an admission fee is charged shall apply for and obtain from the Secretary of Revenue a statewide license for the privilege of engaging in that

1 business in this State, and shall pay for the license a tax of
2 fifty dollars (\$50.00).

3 Counties, cities, and towns shall not levy a license tax on the
4 business taxed under this section."

5 Sec. 8. G.S. 105-37.1(a) reads as rewritten:

6 "(a) ~~Every person, firm, or corporation~~ person engaged in the
7 business of giving, offering or managing any form of
8 entertainment or amusement not otherwise taxed or specifically
9 ~~exempted in this Article, under G.S. 105-36, 105-36.1, 105-37,~~
10 ~~105-38, or 105-40,~~ for which an admission is charged, shall pay
11 an annual license tax of fifty dollars (\$50.00) for each room,
12 hall, tent or other place where such admission charges are made.

13 In addition to the license tax levied above, ~~such person, firm,~~
14 ~~or corporation~~ the person shall pay an additional tax upon the
15 gross receipts of such business at the rate of three percent
16 (3%). Reports shall be made to the Secretary of Revenue, in such
17 form as he may prescribe, within the first 10 days of each month
18 covering all such gross receipts for the previous month, and the
19 ~~additional tax herein levied~~ gross receipts tax shall be paid
20 monthly at the time such reports are made. The annual license tax
21 ~~herein levied~~ shall be treated as an advance payment of the tax
22 ~~upon gross receipts herein levied, and the annual license tax~~
23 gross receipts tax and shall be applied as a credit upon or
24 advance payment of the gross receipts tax.

25 Every ~~person, firm, or corporation~~ person giving, offering, or
26 managing any dance or athletic contest of any kind, except high
27 school and elementary school athletic contests, for which an
28 admission fee in excess of fifty cents (50¢) is charged, shall
29 pay an annual license tax of fifty dollars (\$50.00) for each
30 location where such charges are made, and, in addition, a tax
31 upon the gross receipts derived from admission charges at the
32 rate of three percent (3%). The additional tax upon gross
33 receipts shall be levied and collected in accordance with such
34 regulations ~~as may be made by the Secretary of Revenue.~~
35 Secretary. No tax shall be levied on admission fees for high
36 school and elementary school contests.

37 Dances and other amusements actually promoted and managed by
38 civic organizations and private and public secondary schools,
39 ~~shall not be~~ schools are not subject to the license tax imposed
40 by this section and the first one thousand dollars (\$1,000) of
41 gross receipts derived from such events shall be exempt from the
42 gross receipts tax herein levied when the entire proceeds of ~~such~~
43 ~~dances or other amusements~~ the event are used exclusively for the
44 school or civic and charitable purposes of ~~such organizations~~ the

1 organization and not to defray the expenses of the organization
2 ~~conducting such dance or amusement. the event.~~ The mere
3 sponsorship of a dance or other amusement by such a school,
4 civic, or fraternal organization ~~shall not be deemed to~~ does not
5 exempt ~~such the~~ dance or other amusement as provided in this
6 paragraph, but the exemption shall apply only when the dance or
7 amusement is actually managed and conducted by the school, civic,
8 or fraternal organization and the proceeds are used as ~~herein~~
9 ~~before required.~~ required in this section.

10 Dances and other amusements promoted and managed by a
11 qualifying corporation that operates a center for the performing
12 and visual arts are exempt from the license tax and the gross
13 receipts tax imposed under this section if the dance or other
14 amusement is held at the center. 'Qualifying corporation' means a
15 corporation that is exempt from income tax under G.S.
16 105-130.11(a)(3). 'Center for the performing and visual arts'
17 means a facility, having a fixed location, that provides space
18 for dramatic performances, studios, classrooms and similar
19 accommodations to organized arts groups and individual artists.
20 This exemption ~~shall~~ does not apply to athletic events.

21 The license and gross receipts taxes imposed by this section do
22 not apply to a ~~person, firm, or corporation~~ person that is exempt
23 from income tax under Article 4 of this Chapter and is engaged in
24 the business of operating a teen center. A 'teen center' is a
25 fixed facility whose primary purpose is to provide recreational
26 activities, dramatic performances, dances, and other amusements
27 exclusively for teenagers."

28 Sec. 9. G.S. 105-53(a) and (b) read as rewritten:

29 "(a) Peddler. -- Every person engaged in business or employed
30 as a peddler shall obtain a statewide license from the Secretary
31 of Revenue for the privilege of peddling goods and shall pay a
32 tax of fifty dollars (\$50.00) for the license. for the license in
33 ~~the amount specified in this section.~~ A 'peddler' is a person
34 who travels from place to place with an inventory of goods, who
35 sells the goods at retail or offers the goods for sale at retail,
36 and who delivers the identical goods he carries with him. A
37 ~~peddler of only farm products shall pay a tax of twenty-five~~
38 ~~dollars (\$25.00) regardless of the number of counties in which he~~
39 ~~peddles goods. A peddler who travels from place to place on~~
40 ~~foot, selling goods other than or in addition to farm products,~~
41 ~~shall pay a tax of ten dollars (\$10.00) for each county in which~~
42 ~~he peddles goods. A peddler who travels from place to place by~~
43 ~~vehicle, selling goods other than or in addition to farm~~

1 ~~products, shall pay a tax of twenty-five dollars (\$25.00) for~~
2 ~~each county in which he peddles goods.~~

3 (b) Itinerant Merchant. -- Every person engaged in business as
4 an itinerant merchant shall obtain a statewide license from the
5 Secretary of Revenue for the privilege of engaging in business
6 and shall pay a tax of one hundred dollars (\$100.00) for the
7 license. ~~for the license of one hundred dollars (\$100.00) for~~
8 ~~each county in which he is engaged in business.~~ An 'itinerant
9 merchant' is a merchant, other than a merchant with an
10 established retail store in the county, who transports an
11 inventory of goods to a building, vacant lot, or other location
12 in a county and who, at that location, displays the goods for
13 sale and sells the goods at retail or offers the goods for sale
14 at retail. An itinerant merchant's license is not required to
15 engage in the business of a specialty market vendor at a location
16 licensed as a specialty market under subsection (c) of this
17 section or at a specialty market that is exempt from the license
18 requirement under subsection (c) because the specialty market
19 operator is the State or a unit of local government. A merchant
20 who sells goods, other than farm products, in a county for less
21 than six consecutive months is considered an itinerant merchant
22 unless he stopped selling goods in that county because of his
23 death or disablement, the insolvency of his business, or the
24 destruction of his inventory by fire or other catastrophe."

25 Sec. 10. This act shall become effective July 1, 1992.

Explanation of Proposal 19

Legislative Proposal 19 simplifies the privilege license tax law as it relates to retailers and wholesale merchants. In Article 2 of Chapter 105 of the General Statutes, the State levies annual privilege license taxes on certain businesses. Municipalities have a general authority to levy privilege license taxes on businesses under G.S. 160A-211; G.S. 153A-152 provides that counties may not levy privilege license taxes on businesses unless specifically authorized by law. The State's taxation of businesses under Article 2 is complex. Various businesses are taxed at various rates, some businesses must pay more than one privilege license tax, and some businesses are not taxed at all. Some businesses must obtain one Statewide license while others must obtain a separate State license for every county or municipality in which they are engaged in business, in addition to separate local licenses. Furthermore, the State limits the authority of municipalities to tax certain businesses and not others, and authorizes counties to tax certain businesses and not others. As the nature of businesses and occupations have evolved over time, some of the provisions of Article 2 have been modernized but many archaic provisions remain.

After reviewing the laws affecting State and local privilege license taxes, the Study Committee concluded that the current law is unnecessarily complex, illogical, and unfair in many instances. The complexities make the law hard for State and local governments to administer and for businesses to comply with. The Committee recommended Legislative Proposal 19 as a first step toward making the privilege license taxes more modern, uniform, and equitable. The proposal repeals a number of license taxes on specific businesses and replaces them with a general merchant's privilege tax. The Committee fashioned the proposal to achieve needed reforms without creating an undue financial burden on any segment of the business community or placing undue restrictions on the taxing authority of local governments. Legislative Proposal 19 affects only retail and wholesale businesses, including manufacturers. Consideration of privilege license taxes on service businesses was postponed to a later date.

Section 1 of the bill does not directly affect privilege license taxes but simplifies sales tax filing for retailers. Currently, all businesses that owe \$25.00 or more in State and local sales taxes each month are required to file monthly returns; businesses that

owe less than this amount file quarterly. Section 1 raises the threshold from \$25.00 to \$50.00, so that all businesses liable for less than \$50.00 a month need file only quarterly. This change will simplify sales tax filing for many small businesses.

Section 2 of the bill expands the current "general business" license to a merchant's privilege license for all retailers and wholesale merchants in the State. The license will replace the current licenses for certain specific types of wholesale and retail merchants. Retailers and wholesale merchants, including manufacturers, required to obtain a sales tax license will be subject to the merchant's privilege license tax, as will motor vehicle and motor fuel dealers. Vending machine operators, peddlers, itinerant merchants, and flea market vendors will be exempt from this license because they will continue to be licensed under separate statutes. The annual tax for the merchant's privilege license will be \$50.00. A merchant with one or more locations must obtain a license for each location and must display the license conspicuously at the location for which it was obtained. Counties will be authorized to levy a maximum license tax of \$35.00 on wholesale merchants. The general authority of municipalities to tax retailers and wholesale merchants will be restricted as provided in Section 3 of the bill.

Section 3 of the bill sets out the proposed authority of a municipality to levy a local merchant's privilege license tax. The municipality would be able to tax a retailer or wholesale merchant taxed by the State, except that it could levy no privilege license tax on tax-exempt nonprofit entities or on wholesalers of alcoholic beverages. Alcoholic beverages would be exempt because they are subject to separate State taxes the proceeds of which are shared with local governments. A municipal merchant's privilege license tax would be measured on gross receipts and could not exceed 50¢ per \$1,000 of gross receipts, with a minimum of no more than \$30.00 and a maximum of no more than \$2,000. A municipality's tax would apply to the receipts derived from businesses located within the municipality. If a business has gross receipts that are derived from locations not within North Carolina municipalities, a municipality may tax the gross receipts from business conducted within the municipality.

Section 4 of the bill adds new definitions to Article 2 of Chapter 105. Section 5 repeals 14 statutes that provide various license taxes on merchants; each of these licenses is either unnecessary or will be replaced by the new merchant's privilege license in Section 2 of the bill. A list of all the licenses in Article 2, with notations indicating those amended or repealed by Legislative Proposal 19, is provided in Appendix F of this report.

Section 6 of the bill repeals a \$10.00 annual license that wholesale merchants are currently required to obtain from the Sales and Use Tax Division. This license serves no independent purpose and will be replaced by the new merchant's privilege license. Section 7 of the bill amends the privilege license tax on motion picture distributors to exempt those distributors that will be subject to the new merchant's privilege license and to include those distributors that are now subject to the general business license but will not be subject to the new merchant's privilege license.

Section 8 of the bill clarifies that a business that obtains a merchant's privilege license for its retail sales is not thereby exempt from the separate privilege license for its business of providing amusements. Section 9 of the bill simplifies the State privilege license tax on peddlers and itinerant merchants by providing that only one State license is needed for each business, rather than a separate license for each county in which each peddler and itinerant merchant is engaged in business.

Section 10 of the bill provides that it will become effective July 1, 1992.

Legislative Proposal 19 will affect different businesses and local governments in different ways. A business that is currently paying a municipal gross receipts tax but no State license tax would pay \$50.00 to the State but might pay a lower local tax. A business that is paying a high State tax but a local tax limited by a State-imposed maximum would find that its State tax is reduced but that the municipality in which it is located might exercise its authority to levy a tax higher than the previous maximum. A business that is paying a \$50.00 State tax and is located in a municipality that does not levy a local tax would pay the same State tax and, as long as its municipality did not enact a levy, would continue to pay no municipal tax. Municipalities currently levying gross receipts taxes on businesses that are not protected by State-imposed maximums might find that the tax rate must be reduced, but this restriction would be offset by the broadening of the tax base due to repeal of State-imposed maximums on many businesses. Counties would find that their privilege license tax authority remains limited but is simpler and easier to administer. Overall, the proposal should eliminate perceived unfairness due to differing treatment for similar types of businesses and make the taxes easier for State and local governments to administer and for businesses to comply with.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very long letter, and it contains a great deal of information about the state of the country at that time. The President talks about the war with Mexico, and about the relations between the United States and Great Britain. He also talks about the economy, and about the progress of the country. The letter is written in a very formal style, and it is very well organized. It is a very important document, and it is one of the most important documents in the history of the United States.

2. The second part of the document is a report from the Secretary of the Treasury, dated January 3, 1862. It is a very long report, and it contains a great deal of information about the state of the country at that time. The Secretary talks about the war with Mexico, and about the relations between the United States and Great Britain. He also talks about the economy, and about the progress of the country. The report is written in a very formal style, and it is very well organized. It is a very important document, and it is one of the most important documents in the history of the United States.

3. The third part of the document is a report from the Secretary of the Interior, dated January 3, 1862. It is a very long report, and it contains a great deal of information about the state of the country at that time. The Secretary talks about the war with Mexico, and about the relations between the United States and Great Britain. He also talks about the economy, and about the progress of the country. The report is written in a very formal style, and it is very well organized. It is a very important document, and it is one of the most important documents in the history of the United States.

4. The fourth part of the document is a report from the Secretary of the War, dated January 3, 1862. It is a very long report, and it contains a great deal of information about the state of the country at that time. The Secretary talks about the war with Mexico, and about the relations between the United States and Great Britain. He also talks about the economy, and about the progress of the country. The report is written in a very formal style, and it is very well organized. It is a very important document, and it is one of the most important documents in the history of the United States.

5. The fifth part of the document is a report from the Secretary of the Navy, dated January 3, 1862. It is a very long report, and it contains a great deal of information about the state of the country at that time. The Secretary talks about the war with Mexico, and about the relations between the United States and Great Britain. He also talks about the economy, and about the progress of the country. The report is written in a very formal style, and it is very well organized. It is a very important document, and it is one of the most important documents in the history of the United States.

Proposal 19
Title: Simplify Business License Tax

Explanation of Bill

The proposal would require retail and wholesale merchants for which a sales and use license is required and those merchants engaged in the business of selling or leasing motor vehicles, motor fuels, or special fuels to obtain from the Secretary of Revenue a merchant's privilege license. The license is \$50.00 annually, and one license is required for each location at which a merchant engages in business. The following statutes are repealed and replaced by the new privilege merchants license: 105-46, 105-51.1, 105-61, 105-62, 105-70, 105-72, 105-74, 105-80, 105-85, 105-89, 105-89.1, 105-97, 105-98, 105-99, and 105-102.1.

Current law requires merchants engaged in wholesale trade to purchase both a \$5.00 sales and use tax license and a \$10.00 annual wholesale merchant's license. This proposal repeals the \$10.00 license.

The proposed act authorizes taxpayers whose sales and use tax receipts are less than \$50.00 monthly to file returns quarterly. Currently the threshold is \$25.00.

The merchant's privilege license does not apply to a distributor or operator of merchandise dispensing machines nor to a speciality market vendor, a peddler, or an itinerant merchant. These businesses are taxed separately. The bill provides that peddlers and itinerant merchants will purchase one statewide license, rather than a separate license for each county in which they operate. A statewide peddler's license is \$50.00. The statewide itinerant merchants license is \$100.00.

The bill would authorize counties to levy a license tax not to exceed \$35.00 on wholesale merchants required to purchase the merchant's privilege license. Retailers engaged in wholesale trade may be charged a license fee by counties.

Proposal 19 authorizes municipalities to levy a local merchant's privilege license tax on retailers and wholesalers taxed by the state. Municipalities may not levy a license tax on merchants exempt from federal income tax under Section 501 of the code nor may they impose a gross receipts tax on the wholesale of alcoholic beverages. The tax applies to the prior year's gross receipts from business carried on within the municipality and the tax rate may not exceed 50 cents per \$1,000 of gross receipts. The minimum tax a merchant can be expected to pay is \$30.00 and the maximum is \$2,000.00.

Effective Date

This act becomes effective July 1, 1992.

Fiscal Effect

The estimated impact in General Fund revenue from proposal 19 for FY 92-93 is \$3.7 million. A nonrecurring reverse windfall of \$1 million is created if all eligible taxpayers remit sales tax receipts less than \$50.00 quarterly. The expected increase in General Fund revenue from this proposal for FY 93-94 through FY 95-96 is as follows:

	Revenue (millions)
FY 93-94	\$5.6
FY 94-95	7.1
FY 95-96	8.6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

H

D

PROPOSAL 20 (91-LJ-1)
THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Revenue Department Reports.

(Public)

Sponsors: Rep. Lilley, Abernethy, Brawley, Hasty.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE THE LAWS CONCERNING REPORTS BY THE
DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-256 reads as rewritten:

"§ 105-256. ~~Preparation and publication of statistics.~~ Reports prepared by Secretary of Revenue.

(a) ~~Reports.-- The Secretary of Revenue shall biennially, or more frequently if he so desires, prepare and publish reasonably available statistics dealing with the operation of this Subchapter and Subchapter V, the following:~~

(1) At least every two years, statistics concerning taxes imposed by this Chapter, including amounts collected, classifications of taxpayers, income and exemptions, geographic distribution of taxes, and such other facts as are deemed considered pertinent and valuable.

(2) At least every two years, a tax expenditure report that lists the tax expenditures made by a provision in this Chapter other than a provision in Subchapter II and, when possible to do without impairing other duties of the Secretary or the Department of Revenue, the amount by which revenue

is reduced by each expenditure. A 'tax expenditure' is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State.

(3) As often as required, a report that is not listed in this subsection but is required by another law.

(4) As often as the Secretary determines is needed, other reports concerning taxes imposed by this Chapter.

(b) Information.-- The Secretary of Revenue may require a unit of State or local government to furnish the Secretary statistical information the Secretary needs to prepare a report under this section. Upon request of the Secretary, a unit of government shall submit statistical information on one or more forms provided by the Secretary.

(c) Distribution.-- The Secretary of Revenue shall distribute reports prepared by the Secretary as follows without charge:

(1) Five copies to the Division of State Library of the Department of Cultural Resources, as required by G.S. 125-11.7.

(2) Five copies to the Legislative Services Commission for the use of the General Assembly.

(1) Upon request, one copy to each entity and official to which a copy of the reports of the Appellate Division of the General Court of Justice are furnished under G.S. 7A-343.1.

(4) Upon request, one copy to each member of the General Assembly.

The Secretary of Revenue may charge a person not listed in this subsection a fee for a report prepared by the Secretary in an amount that covers publication or copying costs and mailing costs."

Sec. 2. G.S. 105-257 reads as rewritten:

~~"§ 105-257. Report to General Assembly on tax system. Department may charge fee for report or other document.~~

The Secretary of Revenue shall biennially make report to the General Assembly, making such recommendations as he may consider useful in improving the tax laws and systems of this State, may charge a fee for a report or another document in an amount that covers copying or publication costs and mailing costs."

Sec. 3. Article 37 of Subchapter VI of Chapter 105 of the General Statutes and G.S. 147-88 are repealed.

1 Sec. 4. This act is effective upon ratification.

Explanation of Proposal 20

One aspect of the work of the Revenue Laws Study Committee is to review the revenue laws to determine if any of the laws are obsolete or duplicative. This proposal is one of the proposals resulting from this continuing review. The proposal repeals obsolete reporting requirements of the Department of Revenue, gathers the remaining reporting requirements into a single statute, repeals obsolete provisions concerning the Tax Research Division of the Department of Revenue, and provides that the Secretary of Revenue may charge a fee for a copy of a report or other document.

Section 1 of the bill combines current G.S. 105-256, 105-453, 105-453.1, and 105-456. It restates current law in directing the Department of Revenue to prepare and publish the Statistics of Taxation and the Biennial Tax Expenditure Report and in enabling the Department to obtain information needed for these or other reports from units of State and local government. It clarifies current law by specifying who is to receive a free copy of any report prepared by the Department and it changes current law by deleting the current requirement that the Department print 2,000 copies of the Statistics of Taxation and that the Department include estimates of revenue loss in the Biennial Tax Expenditure Report. The requirement concerning estimates of revenue loss is deleted because it currently applies only if funds are appropriated for that purpose and funds have not been appropriated for that purpose since the provision was enacted. Were funds to be appropriated for that purpose, the appropriations act would specify the purpose of the funds.

Section 2 provides that the Department may charge a fee for a copy of a report or other document. G.S. 12-3.1 grants similar authority to all agencies.

Section 3 repeals G.S. 147-88 and the statutes on the Tax Research Division of the Department of Revenue because these statutes are obsolete or incorrect in several respects and because the relevant portions are transferred to revised G.S. 105-256. The statutes on the Tax Research Division are left over from the days when the Tax Research Division was a separate department of State government. That separate department became a division of the Department of Revenue in the 1971 reorganization of State Government.

In repealing G.S. 147-88 and the Tax Research Division statutes, two obsolete reporting requirements are repealed. The requirement in G.S. 147-88 that the

Secretary report proposed revisions of the revenue laws to the General Assembly within the first 10 days of each session is repealed. Likewise, the requirement in G.S. 105-455 that the Secretary submit proposed revisions to the revenue laws to the Advisory Budget Commission is repealed. These statutes are not currently followed and, with the advent of legislative study committees, are not needed. The Department of Revenue routinely reports its suggestions for changes to the revenue laws to the Revenue Laws Study Committee, the Property Tax Study Committee, or another special purpose study committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 21 (91-LCX-021(10.26))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: License Tax Administration Changes. (Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY AND MODERNIZE CERTAIN PRIVILEGE LICENSE TAXES
TO IMPROVE ADMINISTRATION OF THE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-61 reads as rewritten:

"§ 105-61. Hotels, motels, ~~tourist courts and tourist homes, and~~
~~other businesses that rent to transients.~~

(a) License. Every person, firm, or corporation engaged in the
business of operating ~~any hotel or motel, a hotel, motel, tourist~~
~~court, tourist home, or similar place advertising in any manner~~
~~for transient patronage, or soliciting such business, business~~
~~for transient patronage and every person who rents a private~~
~~residence to transient patrons~~ shall apply for and procure from
the Secretary of Revenue a State license for the privilege of
transacting or engaging in ~~such business, the business.~~ A rental
agent who offers a private residence for rent on behalf of the
owner is responsible for obtaining the license required by this
section on behalf of the owner. ~~and shall pay for such license a~~
~~tax of two dollars (\$2.00) per room. The minimum tax shall be~~
~~fifty dollars (\$50.00).~~

(b) Tax. The license tax is two dollars (\$2.00) per room
subject to a minimum tax of fifty dollars (\$50.00) per license.
This tax is in addition to the tax levied in G.S. 105-62 for the
sale of prepared food.

1 For the purpose of this section, the lobby, clubroom, office,
2 dining room, kitchen and rooms occupied by the owner or lessee of
3 the premises, or members of ~~his~~ the owner or lessee's family, for
4 ~~his or their~~ personal or private use, shall not be counted in
5 ~~determining~~ are not included in the number of rooms for the basis
6 of the tax. ~~The tax herein levied shall be in addition to any tax~~
7 ~~levied in G.S. 105-62 for the sale of prepared food.~~

8 (c) Scope. This section does not apply to a private residence
9 offered for rent to transient patrons for fewer than 15 days in a
10 license year. As used in this section, the term 'residence'
11 includes a house, a cottage, an apartment, a condominium, or
12 another dwelling.

13 (d) Local Licenses. Counties may not levy a license tax on the
14 business taxed under this section, but cities and towns may levy
15 a license tax of up to one-half of the minimum tax levied by the
16 State.

17 (b) Hotel as referred to in this section shall be given its
18 general or customary meaning; that is, a building or group of
19 buildings providing lodging and usually (but not necessarily)
20 meals, entertainment, and various personal services for the
21 public.

22 Motel as referred to in this section shall be given its general
23 or customary meaning; that is, a building or group of buildings
24 in which the rooms usually are directly accessible from an
25 outdoor parking area and which are used primarily as lodgings for
26 the public.

27 In addition to hotels and motels, there is included within the
28 meaning of this section tourist courts, tourist homes and similar
29 places -- including, but not limited to, tourist camps,
30 semidetached apartments, resort lodgings and detached structures
31 whenever the operator advertises in any manner for transient
32 patronage, or solicits such business. The principal test of
33 liability is the use of such places for temporary abode by
34 transient patrons. Such patrons are defined as staying for a
35 short time, stopping for a brief period only, not permanent.

36 (c) It is immaterial for the purposes of this section whether
37 the rental to patrons is on a daily, weekly, biweekly or monthly
38 basis, and it is also immaterial, as to any particular room,
39 whether such room is occupied by a "permanent" guest.

40 (d) "Advertising in any manner" within the meaning of this
41 section shall be broadly construed to cover any media of
42 advertising whereby the availability of the accommodations may be
43 made known and includes, but is not limited to, signs, placards,
44 folders, newspaper ads, classified ads, listings in commercial or

~~1 tourist circulars and any other form or means whereby the
2 accommodations may be publicized. Soliciting such business
3 includes every form of solicitation, or listings with boards of
4 trade or chambers of commerce, by a hotel, motel, or any other
5 place referred to herein accommodating transient patrons.~~

~~6 (e) A single private residence or cottage designed for single
7 family occupancy, located in a resort area, and occupied during a
8 part of the season by the owner or owners thereof but rented the
9 remainder of the season to others for single family occupancy,
10 shall be exempt from the tax imposed in this section. All such
11 private residences or cottages, in excess of one, so located,
12 owned, occupied and rented shall be subject to the tax imposed in
13 this section.~~

~~14 (f) Counties shall not levy any license tax on the business
15 taxed under this section, but cities and towns may levy a license
16 tax not in excess of one half of the base tax levied by the
17 State."~~

Sec. 2. G.S. 105-74 reads as rewritten:

~~19 "§ 105-74. Pressing clubs, dry cleaning plants, and hat
20 blockers.~~

~~21 (a) Establishment License. Every person person, firm, or
22 corporation engaging in the business of operating a dry cleaning
23 plant, pressing club cleaning, pressing, or hat blocking
24 establishment shall apply for and procure from the Secretary of
25 Revenue a State license for the privilege of conducting such a
26 business, and shall pay for such license a tax of fifty dollars
27 (\$50.00). the business. If the establishment does not solicit
28 business in a municipality or an unincorporated county area other
29 than the municipality or unincorporated county area in which the
30 establishment is located, the license tax is fifty dollars
31 (\$50.00). If the establishment solicits business in a
32 municipality or an unincorporated county area other than the
33 municipality or unincorporated county area in which the
34 establishment is located, the license tax is one hundred dollars
35 (\$100.00).~~

~~36 Every person, firm, or corporation, soliciting cleaning work
37 and/or pressing in any city or town where the actual cleaning
38 and/or pressing is done in a cleaning plant or press shop located
39 outside the city or town wherein said cleaning work and/or
40 pressing is solicited shall procure from the Secretary of Revenue
41 a State license for the privilege of soliciting in said city or
42 town, and pay for the same a tax of fifty dollars (\$50.00). This
43 shall not apply to soliciting in cities or towns where there is
44 no cleaning plant, press shop or established agency with fixed~~

~~1 place of business, provided that the solicitor shall have paid a
2 State and municipal license tax in this State.~~

~~3 (b) Soliciting License. Every person, firm or corporation
4 engaged in the business of soliciting dry cleaning and/or or
5 pressing work to be done by a dry cleaning plant which has not
6 paid an establishment that is not liable for the State license
7 tax levied herein in subsection (a) shall pay a tax of two
8 hundred dollars (\$200.00) one hundred dollars (\$100.00). for each
9 vehicle used in carrying the dry cleaning and/or pressing work,
10 and the license issued by the Secretary of Revenue shall be
11 carried The license holder shall carry the license in the cab of
12 any vehicle so employed. used in soliciting in this State.~~

~~13 (c) Local Licenses. A municipality may tax each establishment
14 located in the municipality. The tax may not exceed the rate
15 provided in subsection (a). Counties and municipalities may tax
16 each business taxed under subsection (b). The tax may not exceed
17 the rate provided in subsection (b). Counties, cities and towns
18 may levy a tax upon such persons, firms or corporations not in
19 excess of that levied by the State.~~

~~20 Cities and towns of under 10,000 population may levy a license
21 tax not in excess of twenty-five dollars (\$25.00); cities and
22 towns of 10,000 population and over may levy a license tax not in
23 excess of fifty dollars (\$50.00). Counties shall not levy a
24 license tax on the business taxed under this section.~~

~~25 Counties, cities and towns may not collect a privilege license
26 tax under this section unless the State license tax, if due, has
27 been first paid.~~

~~28 Definitions: (d) Definitions. For the purpose of this section,
29 the following definitions shall apply:~~

~~30 (1) Dry cleaning, pressing, or hat blocking
31 establishment. A place of business where the
32 service 'Dry cleaning, and/or hat blocking, and/or
33 pressing establishments' shall mean any place of
34 business, establishment or vehicle wherein the
35 services of dry cleaning, wet cleaning as a process
36 incidental to dry cleaning, spotting and/or
37 spotting, pressing, finishing and/or finishing, or
38 reblocking hats, garments, or wearing apparel of
39 any kind is performed.~~

~~40 (2) 'Soliciting' as used herein shall mean the
41 acceptance of any Soliciting. Accepting an article
42 or a garment to be dry cleaned and/or or pressed.~~

~~43 "Person" as used herein shall mean any person, firm,
44 corporation, partnership, or association.~~

1 (e) Scope. This section ~~shall~~ does not apply to any bona fide
2 student of any college or university in this State operating such
3 pressing or dry cleaning business at such college or university
4 during the school term of such college or university.

5 A person, firm, or corporation required to be licensed under
6 this section is not required to procure the license under G.S.
7 105-102.5 for the same location."

8 Sec. 3. G.S. 105-85 reads as rewritten:

9 "§ 105-85. Laundries.

10 (a) Laundry License. Every person, firm, or corporation
11 engaged in the business of operating a laundry, ~~including wet or~~
12 ~~damp wash laundries and businesses known as "launderettes,"~~
13 ~~"launderalls" and similar type businesses, where steam,~~
14 ~~electricity, or other power is used, or who engages in laundry or~~
15 engaged in the business of supplying or renting clean linen or
16 towels or wearing apparel, shall apply for and obtain from the
17 Secretary of Revenue a State license for the privilege of
18 engaging in such business, and shall pay for such license a tax
19 of fifty dollars (\$50.00), the business. If the place of
20 business does not solicit work in a municipality or an
21 unincorporated county area other than the municipality or
22 unincorporated county area in which the place of business is
23 located, the license tax is fifty dollars (\$50.00). If the place
24 of business solicits work in a municipality or an unincorporated
25 county area other than the municipality or unincorporated county
26 area in which the place of business is located, the license tax
27 is one hundred dollars (\$100.00)

28 (b) Definitions. The following definitions apply in this
29 section:

30 (1) Laundry. A business where steam, electricity, or
31 other power is used to clean fabric, including a
32 wet or damp wash laundry, a launderette, a
33 launderall, or a similar business. The term
34 'launderettes and launderalls' means 'launderettes
35 and launderalls' shall mean commercial
36 establishments in which automatic washing machines
37 and dryers are installed for the use of individual
38 customers, including those which contain
39 coin-operated or coin-activated washing machines.
40 However, 'launderettes and launderalls' shall the
41 term does not include persons who own or operate
42 apartment buildings in which they provide such
43 machines for the exclusive use and convenience of
44 tenants therein, nor shall such persons be

1 considered to be engaged in any 'similar type
2 business.'

3 (2) Place of business. A fixed place at which the
4 business is maintained.

5 ~~Every person, firm, or corporation soliciting laundry work or~~
6 ~~supplying or renting clean linen or towels or wearing apparel in~~
7 ~~any city or town, outside of the city or town wherein said~~
8 ~~laundry or linen supply or towel supply or wearing apparel supply~~
9 ~~business is established, shall procure from the Secretary of~~
10 ~~Revenue a State license and shall pay for such license a tax of~~
11 ~~fifty dollars (\$50.00) for the privilege of soliciting therein.~~
12 ~~The additional tax levied in this paragraph shall apply to the~~
13 ~~soliciting of laundry work or linen supply or towel supply work~~
14 ~~or wearing apparel supply work in any city or town in which there~~
15 ~~is a laundry, linen supply or towel supply or wearing apparel~~
16 ~~supply establishment located in the said city or town. The~~
17 ~~soliciting of business for or by any person, firm, or corporation~~
18 ~~engaged in the business of laundry work and/or supplying or~~
19 ~~renting clean linen or towels or wearing apparel shall and the~~
20 ~~same is hereby construed to be engaging in the said business.~~

21 (c) Soliciting License. Every person, firm or corporation
22 engaged in the business of soliciting laundry work to be done by
23 a laundry or plant which has not paid that is not liable for the
24 State license tax levied herein in subsection (a) shall pay a tax
25 of two hundred dollars (\$200.00) one hundred dollars (\$100.00).
26 for each vehicle used in carrying the laundry work, and the
27 license issued by the Secretary of Revenue shall be carried. The
28 license holder shall carry the license in the cab of any vehicle
29 used in soliciting in this State. so employed. Counties, cities
30 and towns may levy a tax upon such persons, firms or corporations
31 not in excess of that levied by the State.

32 (d) Scope. A person, firm, or corporation required to be
33 licensed under this section is not required to procure the
34 license under G.S. 105-102.5 for the same location.

35 (e) Local Licenses. A municipality may tax each place of
36 business taxed under subsection (a) that is located in the
37 municipality. The tax may not exceed the rate provided in
38 subsection (a). Counties and municipalities may tax each
39 business taxed under subsection (c). The tax may not exceed the
40 rate provided in subsection (c). Counties, cities and towns,
41 respectively, may levy a license tax not in excess of twelve
42 dollars and fifty cents (\$12.50) on any person, firm, or
43 corporation engaged in the business of laundry work and/or
44 supplying or renting clean linen or towels or wearing apparel in

~~1 instances when said work is performed outside the said county or
2 town, or when the linen or towels or wearing apparel are supplied
3 by business outside said county or town. Cities and towns may
4 levy a license tax not in excess of fifty dollars (\$50.00) on any
5 other person, firm or corporation engaged in the business of
6 laundry work and/or supplying or renting clean linen or towels or
7 wearing apparel. Counties, cities and towns may not collect a
8 privilege license tax under this section unless the State license
9 tax, if due, has been first paid."~~

10 Sec. 4. This act becomes effective July 1, 1991.

Explanation of Proposal 21

Legislative Proposal 21 makes a number of changes designed to simplify administration of the privilege license tax statutes and to make compliance easier for taxpayers. Section 1 of the bill amends the privilege license tax on hotels, motels, and similar businesses. It deletes language that has been found unnecessary to the administration of the tax, reorganizes the statute, and modernizes its wording. In addition, Section 1 adopts some of the sales and use tax rules that apply to the same businesses, providing when a rental agent may be responsible for the license on behalf of an owner and restricting the exemption for private residences to those offered for rental for fewer than 15 days in a year.

Sections 2 and 3 of the bill simplify and clarify the privilege license taxes on dry cleaners and laundries. Currently, each business must obtain one \$50.00 license for its main business. Each business must also obtain an additional \$50.00 license for each city or town, other than the one in which it is located, in which it solicits, unless there is no other similar business in that city or town. Furthermore, when these statutes were revised in 1989, an additional provision requiring a license for soliciting in a rural county area was inadvertently deleted. The existing provisions as well as the deleted provision are apparently designed to hamper statewide competition. Another provision, levying a \$200.00 license for every truck that comes in from another state soliciting business, provides different, arguably discriminatory, treatment for out-of-State businesses. These provisions are exceedingly complex, making State administration and taxpayer compliance difficult. Requiring a separate license for each area in which a business solicits or for each truck it uses appears to serve no valid purpose. Sections 2 and 3 of the bill rewrite the dry cleaning and laundry license tax statutes to provide one \$50.00 statewide license for every business that does not solicit outside its city or town and one \$100.00 license for every business, whether or not located in this state, that does solicit outside its city or town. Municipalities will be authorized to tax establishments located within their limits. Counties and municipalities will be authorized to tax out-of-state businesses that do business within their limits. The local tax may not exceed the State tax.

Section 4 provides that the bill will become effective July 1, 1991.

Proposal 21

Short Title: License Tax Administrative Changes

Explanation of Bill

Current law allows owners of private residences rented to transient patrons an exemption from the license required under G.S. 105-61 if the owner spends part of the season in the residence. Proposal 21 requires a license to be obtained for each private residence offered for rent to transient patrons for more than 15 days regardless of the amount of time the owner spends at the residence. If a rental agent acting on the behalf of the owner engages in offering a residence for rent then the agent is required to obtain from the Secretary of Revenue one license for each residence to be rented. If an owner rents a residence or residences then one license is required for each residence.

The proposed act requires dry cleaning and laundry establishments located and operating within the limits of a city or town to obtain a State license of \$50.00 for each location at which services are rendered. Those firms soliciting and obtaining business from patrons outside the limits of a city or town are required to purchase a \$100.00 license for each location receiving or performing the work.

Proposal 21 allows municipalities to levy a tax not to exceed the state rate for those businesses operating within their limits. Counties and municipalities may tax out-of-state establishments, conducting business within their limits, in an amount not to exceed the state tax rate of \$100.00.

Effective Date

This act becomes effective July 1, 1991.

Fiscal Effect

The estimated increase in General Fund revenues from the additional licenses required on private residents rented for FY 91-92 will be less than \$50,000. The estimated increase for FY 92-93 through FY 94-95 is expected to range between \$75,000 and \$100,000.

The licensing change on dry cleaners and laundries is expected to be revenue neutral.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 22 (91-LCX-020(10.26))
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Sales Tax Administration Changes. (Public)

Sponsors: Senators Winner; Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPROVE ADMINISTRATION OF THE SALES AND USE TAX BY
INCREASING THE LICENSE TAXES, ALLOWING MORE SMALL RETAILERS TO
FILE QUARTERLY SALES TAX RETURNS, AND EXTENDING THE LIMITATIONS
PERIOD FOR ENFORCING LIABILITY AGAINST CERTAIN TRANSFEREES AND
CORPORATE OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Any person who engages ~~or continues~~ in any business for
which a privilege tax is imposed by this Article shall
immediately ~~after July 1, 1979,~~ apply for and obtain from the
Secretary upon payment of ~~the sum of five dollars (\$5.00)~~ twenty-
five dollars (\$25.00) a license to engage in and conduct ~~such the~~
business upon the condition that the person shall pay the tax
accruing to the State under this Article; the person shall
thereby be duly licensed and registered to engage in ~~and conduct~~
~~such the~~ business. Except as hereinafter provided, a license
issued under this subsection shall be a continuing license until
revoked for failure to comply with the provisions of this
Article. ~~However, any person who has heretofore applied for and~~
~~obtained the license, if the license was in force and effect as~~
~~of July 1, 1979, shall not be required to apply for and obtain a~~
~~new license.~~

1 A license issued under this section becomes void if the license
2 holder ~~Any person who~~ ceases to be engaged in ~~any a~~ business for
3 ~~which a privilege tax is imposed by this Article, and who Article~~
4 ~~and remains continuously out of business for a period of five~~
5 ~~years. The burden of proving that a license is still valid is on~~
6 ~~the license holder. years shall apply for and obtain a new~~
7 ~~license from the Secretary upon the payment of a tax of five~~
8 ~~dollars (\$5.00), and any license previously issued under this~~
9 ~~section shall be void. The burden of proof after such period~~
10 ~~shall be upon the taxpayer to show that he did engage in such~~
11 ~~business within the period, and that no new license is required.~~

12 A retailer who sells tangible personal property at a flea
13 market shall conspicuously display his sales tax license when
14 making sales at the flea market."

15 Sec. 2. G.S. 105-164.5 reads as rewritten:

16 "§ 105-164.5. Imposition of tax; wholesale merchant.

17 There is ~~hereby~~ levied and imposed, in addition to all other
18 taxes of every kind now imposed by law, a privilege or license
19 tax upon every person who engages in the business of selling
20 tangible personal property at wholesale in this State ~~as defined~~
21 ~~herein, the same to be collected and the amount to be determined~~
22 ~~in the following manner, to wit: State as follows:~~

23 (1) Every wholesale merchant as defined in this Article
24 shall apply for and obtain an annual license and
25 ~~pay tax therefor of ten dollars (\$10.00). pay for~~
26 ~~the license a tax of twenty-five dollars (\$25.00).~~
27 Such annual This license ~~tax~~ shall be paid ~~for~~ in
28 advance within the first 15 days of July in each
29 year or, in the case of a new business, within 15
30 days after business is commenced. Manufacturers
31 making wholesale sales, as defined in this Article,
32 of their own manufactured products, directly and
33 exclusively from the place where ~~such articles of~~
34 ~~tangible personal property the products are~~
35 ~~manufactured are not are manufactured, shall not be~~
36 required to obtain an annual wholesale license.

37 (2) The sale of any tangible personal property by any
38 wholesale merchant to anyone other than to a
39 registered retailer, ~~wholesale merchant merchant,~~
40 or nonresident retail or wholesale merchant ~~as~~
41 ~~defined~~ for resale shall be taxable at the rate ~~of~~
42 ~~tax~~ provided in this Article upon the retail sale
43 of tangible personal property.

- (3) The sale of any tangible personal property by any wholesale merchant to a nonresident retail or wholesale merchant must be in strict compliance with ~~such regulations as may be promulgated by the Secretary. Secretary and which are applicable to such sales.~~ Any sale which ~~A sale that~~ does not conform to ~~such the~~ regulations ~~shall be~~ is taxable at the rate of tax provided in this Article upon the retail sale of tangible personal property.
- (4) Every wholesale merchant who sells tangible personal property to retailers or nonresident retail or wholesale merchants for resale shall deliver to ~~such the~~ customer a bill of sale for each sale of ~~such tangible personal property~~ whether sold for cash or on credit, ~~credit and~~ shall ~~make and~~ retain a duplicate or carbon copy of each ~~such bill of sale~~ bill of sale, and shall keep ~~on file all such duplicate bills~~ each bill of sale on file for at least three years from the date of sale. Failure to comply with ~~the provisions of this subsection~~ shall subject the wholesale merchant to liability for tax upon ~~such the~~ sales at the rate of tax levied in this Article upon retail sales.
- (5) The tax levied is ~~and shall be~~ in addition to all other ~~taxes whether levied in the form of excise, license or privilege or other taxes.~~

Sec. 3. G.S. 105-164.6(f) reads as rewritten:

"(f) Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use or consumption in this State shall immediately ~~after July 1, 1979,~~ apply for and obtain from the Secretary upon the payment of ~~the sum of five dollars (\$5.00)~~ twenty-five dollars (\$25.00) a license to engage in and conduct ~~such the~~ business upon the condition that such person shall pay the tax accruing to the State of North Carolina under the provisions of this Article, and ~~he~~ under this Article; the person shall thereby be duly licensed and registered to engage in ~~and conduct such the~~ business. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. ~~However, any person who has heretofore applied for and obtained such license, and such license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.~~

1 A license issued under this section becomes void if the license
2 holder ~~Any person who~~ ceases to be engaged in ~~any a~~ business for
3 which a tax is imposed by this ~~Article, and who~~ Article and
4 remains continuously out of business for a period of five years.
5 The burden of proving that a license is still valid is on the
6 license holder. ~~years shall apply for and obtain a new license~~
7 ~~from the Secretary upon the payment of a tax of five dollars~~
8 ~~(\$5.00), and any license previously issued under this section~~
9 ~~shall be void. The burden of proof after such period shall be~~
10 ~~upon the taxpayer to show that he did engage in such activity~~
11 ~~within the period, and that no new license is required."~~

12 Sec. 4. G.S. 105-164.16(b) reads as rewritten:

13 "(b) General Reporting Periods. -- Returns of taxpayers who are
14 required by this subsection to report on a monthly or quarterly
15 basis are due within 15 days after the end of each monthly or
16 quarterly period. Returns of taxpayers who are required to report
17 on a semimonthly basis are due within 10 days after the end of
18 each semimonthly period.

19 A taxpayer who is consistently liable for less than ~~twenty-five~~
20 ~~dollars (\$25.00)~~ fifty dollars (\$50.00) a month in State and
21 local sales and use taxes may, with the approval of the
22 Secretary, file a return on a quarterly basis. A taxpayer who is
23 consistently liable for at least twenty thousand dollars
24 (\$20,000) a month in State and local sales and use taxes shall,
25 when directed to do so by the Secretary, file a return on a
26 semimonthly basis. All other taxpayers shall file a return on a
27 monthly basis. Quarterly reporting periods end on the last day of
28 March, June, September, and December; monthly reporting periods
29 end on the last day of the month; and semimonthly reporting
30 periods end on the 15th of each month and the last day of each
31 month.

32 The Secretary shall monitor the amount of tax remitted by a
33 taxpayer and shall direct a taxpayer who consistently remits at
34 least twenty thousand dollars (\$20,000) each month to file a
35 return on a semimonthly basis. In determining the amount of tax
36 due from a taxpayer for a reporting period the Secretary shall
37 consider the total amount due from all places of business owned
38 or operated by the same person as the amount due from that
39 person.

40 A taxpayer who is directed to remit sales and use taxes on a
41 semimonthly basis but who is unable to gather the information
42 required to submit a complete return for either the first
43 reporting period or both the first and second semimonthly
44 reporting periods may, upon written authorization by the

1 Secretary, file an estimated return for that first reporting
2 period or both periods on the basis prescribed by the Secretary.
3 Once a taxpayer is authorized to file an estimated return for the
4 first period or both periods, the taxpayer may continue to file
5 an estimated return for the first or both periods until the
6 Secretary, by written notification, revokes the taxpayer's
7 authorization to do so. When filing a return for the second
8 semimonthly reporting period, a taxpayer who files an estimated
9 return for the first period but not both periods shall remit the
10 amount of tax due for both the first and second reporting
11 periods, less the amount he remitted with his estimated return.

12 A taxpayer who files an estimated return for both periods is
13 considered to have been granted an extension for both the first
14 and second reporting periods. Notwithstanding G.S. 105-164.19, if
15 a taxpayer who files an estimated return for both periods files a
16 reconciling return for those periods within ten days of the due
17 date of the return for the second period and any underpayment of
18 estimated taxes remitted with the reconciling return is less than
19 ten percent (10%) of the amount of taxes due for both the first
20 and second reporting periods, no interest shall be charged.
21 Otherwise, a taxpayer who files an estimated return for both
22 periods shall be charged interest at the statutory rate from the
23 due date of the return for the first reporting period to the date
24 the reconciling return is filed."

25 Sec. 5. G.S. 105-164.29 reads as rewritten:

26 "§ 105-164.29. Application for licenses by wholesale merchants
27 and retailers.

28 Every application for a license by a wholesale merchant or
29 retailer shall be made upon a form prescribed by the Secretary
30 and shall set forth ~~the name under which the applicant transacts~~
31 ~~or intends to transact business, the location of his place or~~
32 ~~places of business, and such other~~ all ~~information as the~~
33 Secretary may require. The application shall be signed by the
34 owner if a natural person; in the case of an association or
35 partnership, by a member or partner; in the case of a
36 corporation, by an executive officer or some other person
37 specifically authorized by the corporation to sign the
38 application, to which shall be attached the written evidence of
39 his authority. ~~Provided, however, that persons, firms, or~~
40 ~~corporations, A wholesale merchant or retailer whose business~~
41 ~~extends into more than one county shall be is required to secure~~
42 ~~only one license under the provisions of this Article which~~
43 ~~license shall to cover all operations of such company the~~
44 ~~business throughout the State of North Carolina. State.~~

1 When the required application has been made the Secretary shall
2 issue a license to the applicant. ~~grant and issue to each~~
3 ~~applicant such license.~~ A license is not assignable and is valid
4 only for the person in whose name it is issued and for the
5 transaction of business at the place designated ~~therein,~~ in the
6 license. The license holder shall display the license
7 conspicuously at all times at the place for which it was issued.
8 ~~It shall be at all times conspicuously displayed at the place of~~
9 ~~which issued.~~

10 A ~~retailer~~ person whose license has been previously suspended
11 or revoked shall pay the Secretary ~~the sum of five dollars~~
12 ~~(\$5.00)~~ twenty-five dollars (\$25.00) for the reissuance or
13 ~~renewal of such of the license.~~ A wholesale merchant whose
14 annual license has been previously suspended or revoked shall pay
15 the Secretary ~~the sum of ten dollars (\$10.00)~~ twenty-five dollars
16 (\$25.00) for the reissuance or renewal of such of the license
17 for the year or fraction thereof for which said license is
18 reissued or renewed, remainder of the license year.

19 ~~Whenever any wholesale merchant or retailer a license holder~~
20 ~~fails to comply with any provision of this Article or any rule or~~
21 ~~regulation of the Secretary relating thereto, this Article, the~~
22 ~~Secretary, upon hearing, after giving the wholesale merchant or~~
23 ~~retailer license holder 10 days' notice in writing, specifying~~
24 ~~the time and place of hearing and requiring him the license~~
25 ~~holder to show cause why his the license should not be revoked,~~
26 ~~may revoke or suspend the license. license held by such wholesale~~
27 ~~merchant or retailer.~~ The notice may be served personally or by
28 registered mail directed to the last known address of the ~~person,~~
29 license holder. All provisions with respect to review and
30 appeals of the Secretary's decisions as provided by G.S.
31 105-241.2, 105-241.3, and 105-241.4 ~~of the General Statutes shall~~
32 be applicable apply to this section.

33 Any wholesale merchant or retailer who engages in business as
34 a seller in this State without a license or after his the license
35 has been suspended or revoked, and each officer of any
36 corporation which so engages in business shall be guilty of a
37 misdemeanor and subject to a fine of not exceeding up to five
38 hundred dollars (\$500.00) for each ~~such offense."~~

39 Sec. 6. G.S. 105-164.38 reads as rewritten:

40 "\$ 105-164.38. Tax shall be a lien.

41 The tax imposed by this Article shall be a lien upon ~~the stock~~
42 ~~of goods and/or any other all~~ property of any person subject to
43 the provisions of this Article who ~~shall sell out or in any~~
44 ~~manner transfer his~~ transfers the business or stock of goods or

1 ~~shall quit goes out of business. business, and such~~ Such a
2 ~~person shall be required to make out file~~ the return provided for
3 ~~under Division IV of required by~~ this Article within 30 days
4 ~~after the date he sold out his business or stock of goods or quit~~
5 ~~transferring the business or going out of business. business and~~
6 ~~his successor in~~ The person to whom the business or the
7 ~~purchaser of~~ the entire stock of goods was transferred shall be
8 ~~required to~~ withhold sufficient of the purchase money or money's
9 worth in the event there is an exchange of properties to cover
10 the ~~amount of said taxes due and unpaid until such time as~~ the
11 ~~former owner shall produce~~ produces a receipt from the Secretary
12 showing that the taxes have been paid or a certificate that no
13 taxes are due. If the ~~purchaser~~ transferee of a business or
14 stock of goods ~~shall fail~~ fails to withhold purchase money as
15 ~~above provided, and the taxes shall be due and or money's worth~~
16 ~~and the taxes remain unpaid after the 30-day period allowed, he~~
17 ~~the transferee~~ shall be personally liable for the payment of the
18 taxes accrued and unpaid on account of the operation of the
19 business by the former owner. ~~The transferee shall be liable for~~
20 ~~payment of any sales and/or use taxes due by the transferor~~
21 ~~owner, to the extent of the purchase price paid by the transferee~~
22 ~~or fair market value of the property transferred whichever is~~
23 ~~greater. The period of limitations for assessing liability~~
24 ~~against the transferee and enforcing the lien against the~~
25 ~~property shall expire one year after the end of the period of~~
26 ~~limitations for assessment against the transferor. Except as~~
27 ~~otherwise provided in this section, the~~ The transferee or
28 ~~successor in business~~ and the liability of the transferee of
29 ~~successor in business shall be~~ are subject to the provisions of
30 G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other
31 remedies for the collection of taxes to the same extent as if the
32 transferee or ~~successor in business~~ had incurred the original tax
33 liability."

34 Sec. 7. G.S. 105-253 reads as rewritten:

35 "§ 105-253. Personal liability of officers, trustees, or
36 receivers.

37 (a) Any officer, trustee, or receiver of any corporation
38 required to file report with the Secretary of Revenue, having in
39 his custody funds of the corporation, who allows ~~said the funds~~
40 to be paid out or distributed to the stockholders of ~~said the~~
41 corporation without having satisfied the Secretary of Revenue for
42 any State taxes ~~which that~~ are due and have accrued, shall be
43 personally ~~responsible~~ liable for the payment of ~~said the~~ tax,
44 and ~~in addition thereto~~ shall be subject to ~~a~~ an additional

1 ~~penalty of not more than equal to the amount of tax, nor less~~
2 ~~than twenty-five percent (25%) of such tax found to be due or~~
3 ~~accrued, tax due.~~

4 (b) Each responsible corporate officer is ~~made~~ personally and
5 individually liable:

6 (1) For all sales and use taxes collected by a
7 corporation upon taxable transactions of the
8 corporation, which liability shall be satisfied
9 upon timely remittance of ~~such the~~ taxes to the
10 Secretary by the corporation;

11 (2) For all sales and use taxes due upon taxable
12 transactions of the corporation but upon which the
13 corporation failed to collect the tax, but only if
14 the responsible officer knew, or in the exercise of
15 reasonable care should have known, that the tax was
16 not being collected; and

17 (3) For all taxes due from the corporation pursuant to
18 the provisions of Article 36 and Article 36A of
19 Subchapter V of this Chapter.

20 ~~His~~ The liability of the responsible corporate officer is shall
21 ~~be~~ satisfied upon timely remittance of such the tax to the
22 Secretary by the corporation. If said tax shall remain the tax
23 remains unpaid by the corporation, after the same corporation
24 after it is due and payable, the Secretary of Revenue may assess
25 the tax against, and collect the tax from, any responsible
26 corporate officer in accordance with the provisions of G.S.
27 105-241.1, which officer shall be the 'taxpayer' in such case, as
28 referred to in G.S. 105-241.1 et seq. As used in this section,
29 the words 'responsible corporate officers' mean the president and
30 the treasurer of a corporation and may include such officer'
31 include the president and the treasurer of the corporation and
32 any other officers as have been assigned the duty of filing tax
33 returns and remitting the taxes to the Secretary of Revenue on
34 behalf of the corporation. Any penalties which may be imposed
35 pursuant to the provisions of G.S. 105-236 and which are
36 applicable to a deficiency shall apply to any assessment provided
37 for herein in this section. All other provisions of Article 9,
38 Schedule J of the Revenue Laws shall apply to such 9 of this
39 Chapter apply to the assessment to the extent that they are not
40 inconsistent with the provisions of this section.

41 (b1) The period of limitations for assessing any liability
42 against a corporate officer, trustee, or receiver shall expire
43 one year after the expiration of the period of limitations for
44 assessment against the corporation.

1 (c) The Secretary of State shall withhold the issuance of any
2 certificate of dissolution to, or withdrawal of, any corporation,
3 domestic or foreign, until the receipt by him of a notice from
4 the Secretary of Revenue to the effect that any such corporation
5 has met the requirements with respect to reports and taxes
6 required by this Subchapter."

7 Sec. 8. This act becomes effective July 1, 1991.
8 Sections 1 through 5 of this act apply to licenses issued or
9 renewed on or after July 1, 1991. This act does not extend a
10 period of limitations that expires before the act is ratified.

Explanation of Proposal 22

Legislative Proposal 22 makes a number of changes to the sales and use tax statutes, as requested by the Department of Revenue to simplify administration of the taxes. Sections 1, 2, 3, and 5 of the bill would increase the costs of privileges licenses that retailers and wholesale merchants must obtain from the Sales and Use Tax Division. All retailers and wholesale merchants, including manufacturers, must register with the Division and obtain a one-time license for \$5.00. Certain wholesale merchants must also obtain a \$10.00 annual license. In addition, retailers that deliver property for use in this State must register with the Division and obtain a one-time license for \$5.00. The same \$5.00 or \$10.00 tax must be paid for renewal of one of these licenses. The amounts charged for these licenses have not been increased in many years and are less than the actual administrative costs of issuing and renewing the licenses. Sections 1, 2, 3, and 5 of the bill would increase each charge to \$25.00, as requested by the Department of Revenue. These sections also modernize some of the statutory language applicable to the licenses.

Section 4 of the bill would authorize quarterly sales tax filing for more small retailers. Currently, all businesses that owe at least \$25.00 in State and local sales taxes each month are required to file monthly returns; businesses that owe less than this amount file quarterly. Section 4 would raise the threshold from \$25.00 to \$50.00, so that all businesses liable for less than \$50.00 a month could file quarterly. This change will simplify sales tax filing for many small businesses.

Under current law, if a retail business is transferred, the transferor is required to pay all sales and use taxes owed by the business. The taxes are a lien against the transferor's property. In addition, in order to protect the State's interest in these taxes, the law requires the transferee to withhold enough of the purchase price to cover the taxes until the transferor shows a receipt or certificate proving that there are no outstanding taxes due from the business. If the transferee fails to do this, and the transferor does not pay the taxes, the transferee is also personally liable for the taxes to the extent of the purchase price paid for the business or the value of the business, whichever is greater. Section 6 of the bill provides that the Department of Revenue may enforce the lien against the property or assess the liability against the transferee

for an additional year after the limitations period has expired against the transferor. This additional year is necessary so that the Department may first pursue its remedies against the transferor before proceeding against the transferee. Allowing an additional year for assessments against transferees conforms this statute to the general provision regarding transferee liability, G.S. 105-239.1. Section 6 also modernizes and clarifies the language of the statute.

Similarly, corporate officers are required to pay taxes due to the State before allowing corporate funds to be distributed. If a corporate officer allows the funds to be disbursed without paying the taxes due, the officer becomes personally liable for the taxes. Section 7 of the bill provides that the Department of Revenue may assess this liability against the officer until the expiration of one year after the limitations period has expired against the corporation. This additional year is necessary so that the Department may first pursue its remedies against the corporation before proceeding against the officer. Section 7 also modernizes and clarifies the language of the statute.

Section 8 provides that the bill is to become effective July 1, 1991. The license tax increases will apply to licenses issued or renewed on or after that date. The addition of another year to the period for assessing liability against transferees and officers does not apply to a transferee or officer for whom the limitations period had already expired before July 1, 1991.

Proposal 22
Short Title: Sales Tax Administrative Changes.

Explanation of Bill

The proposed legislation increases the sales and use tax and wholesale license fees, levied in Article 5 of the Revenue Act, from \$5.00 and \$10.00, respectively, to \$25.00. The sales and use license tax is required of any person who engages in any business for which a tax is imposed under Article 5 and is valid unless revoked. The wholesale license is renewed annually. The fee for issuing a revoked or suspended license increases from \$5.00 and \$10.00 to \$25.00.

The act also authorizes taxpayers whose sales tax receipts are less than \$50.00 monthly to file returns quarterly. Currently the threshold for quarterly filing is \$25.00.

Effective Date

This act applies to licenses issued or renewed on or after July 1, 1991.

Fiscal Effects

The estimated impact in General Fund revenue due to this proposal for FY 91-92 is \$300,000. A nonrecurring reverse windfall of \$1 million is created if all eligible taxpayers remit sales tax receipts less than \$50.00 quarterly. The estimated increase in General Fund revenue for FY 92-93 through FY 94-95 is \$1.3 million.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

PROPOSAL 23 (91-LJ-12)

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Modify Tax Secrecy Provision.

(Public)

Sponsors: Sen. Winner, Kincaid, Staton.

Referred to:

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE PROHIBITION AGAINST DISCLOSING TAX
2 INFORMATION, TO MODIFY THE PROHIBITION TO PERMIT THE EXCHANGE
3 OF CERTAIN INFORMATION BETWEEN DESIGNATED AGENCIES, AND TO
4 EXCLUDE INFORMATION SUBMITTED ON A MASTER TAX APPLICATION FORM
5 FROM THE PROHIBITION.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 105-259 reads as rewritten:

9 "§ 105-259. Secrecy required of officials; penalty for
10 violation.

11 ~~With respect to any one of the following persons: (i) the~~
12 ~~Secretary of Revenue and all other officers or employees, and~~
13 ~~former officers and employees, of the Department of Revenue; (ii)~~
14 ~~local tax officials, as defined in G.S. 105-273, and former local~~
15 ~~tax officials; (iii) members and former members of the Property~~
16 ~~Tax Commission; (iv) any other person authorized in this section~~
17 ~~to receive information concerning any item contained in any~~
18 ~~report or return, or authorized to inspect any report or return;~~
19 ~~and (v) the Commissioner of Insurance and all other officers or~~
20 ~~employees and former officers and employees of the Department of~~
21 ~~Insurance with respect to State and federal income tax returns~~
22 ~~filed with the Commissioner of Insurance by domestic insurance~~
23 ~~companies; and except in accordance with proper judicial order or~~

~~1 as otherwise provided by law, it shall be unlawful for any of
2 these persons to divulge or make known in any manner the amount
3 of income, income tax or other taxes of any taxpayer, or
4 information relating thereto or from which the amount of income,
5 income tax or other taxes or any part thereof might be
6 determined, deduced or estimated, whether it is set forth or
7 disclosed in or by means of any report or return required to be
8 filed or furnished under this Subchapter, or in or by means of
9 any audit, assessment, application, correspondence, schedule or
10 other document relating to the taxpayer, notwithstanding the
11 provisions of Chapter 132 of the General Statutes or of any other
12 law or laws relating to public records. It shall likewise be
13 unlawful to reveal whether or not any taxpayer has filed a
14 return, and to abstract, compile or furnish to any person, firm
15 or corporation not otherwise entitled to information relating to
16 the amount of income, income tax or other taxes of a taxpayer,
17 any list of names, addresses, social security numbers or other
18 personal information concerning the taxpayer, whether or not the
19 list discloses a taxpayer's income, income tax or other taxes, or
20 any part thereof, except that when an election is made by a
21 husband and wife under G.S. 105-152.1 to file a joint return, any
22 information given to one spouse concerning the income or income
23 tax of the other spouse reported or reportable on the joint
24 return shall not be a violation of the provisions of this
25 section.~~

~~26 Nothing in this section shall be construed to prohibit the
27 publication of statistics, so classified as to prevent the
28 identification of particular reports or returns, and the items
29 thereof; the inspection of these reports or returns by the
30 Governor, Attorney General, or their duly authorized
31 representative; or the inspection by a legal representative of
32 the State of the report or return of any taxpayer who shall bring
33 an action to set aside or review the tax based thereon, or
34 against whom an action or proceeding has been instituted to
35 recover any tax or penalty imposed by this Subchapter; nor shall
36 the provisions of this section prohibit the Department of Revenue
37 furnishing information to other governmental agencies of persons
38 and firms properly licensed under Schedule B, G.S. 105-33 to
39 105-113. The Department of Revenue may exchange information with
40 the officers of organized associations of taxpayers under
41 Schedule B, G.S. 105-33 to 105-113, with respect to parties
42 liable for these taxes and as to parties who have paid these
43 license taxes.~~

~~1 When any record of the Department of Revenue has been
2 photographed, photocopied, or microphotocopied pursuant to the
3 authority contained in G.S. 8-45.3, the original of that record
4 may thereafter be destroyed at any time upon the order of the
5 Secretary of Revenue, notwithstanding the provisions of G.S.
6 121-5, G.S. 132-2, or any other law relating to the preservation
7 of public records. Any record that has not been so photographed,
8 photocopied, or microphotocopied shall be preserved for three
9 years, and thereafter until the Secretary of Revenue orders it
10 destroyed.~~

11 (a) Disclosure Prohibited.-- An officer, an employee, or an
12 agent of the State or of a unit of local government who has
13 access to tax information in the course of service to or
14 employment by the State or unit of local government may not
15 disclose the information to another unless the disclosure is made
16 for one of the following purposes:

- 17 (1) To comply with a court order or a law.
- 18 (2) To give a husband or wife who elects to file a
19 joint individual income tax return information
20 concerning the income tax liability of the other
21 spouse.
- 22 (3) Review by the Governor or a representative of the
23 Governor.
- 24 (4) Review by the Attorney General or other legal
25 representative of the State to determine the
26 accuracy or sufficiency of the information or to
27 prepare for a legal action concerning the
28 information.
- 29 (5) To provide an officer of an organized association
30 of taxpayers with a list of taxpayers who are
31 liable for or have paid a privilege license tax
32 under Article 2 of this Chapter.
- 33 (6) Review by a representative of another state or the
34 United States to aid the state or the United States
35 in collecting a tax imposed by this State, the
36 other state, or the United States if the laws of
37 the other state or the United States allow the
38 state or the United States to provide similar tax
39 information to a representative of this State.
- 40 (7) To receive, process, or deliver tax information on
41 behalf of the Department of Revenue.
- 42 (8) To exchange information with the Division of Motor
43 Vehicles of the Department of Transportation when
44 the information is needed to fulfill a duty imposed

on the Department of Revenue or the Division of Motor Vehicles.

(9) To exchange information concerning a tax imposed by Article 2, 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

(10) To furnish to the Department of State Treasurer the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(11) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is needed to enable the Commission to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(12) To furnish to the Department of Secretary of State the name and address of a corporation liable for corporate income and franchise taxes to enable the Secretary of State to notify the corporation of the requirement to file an annual report with the Secretary of State.

(13) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(b) Punishment.-- Any person, officer, agent, clerk, employee, or local tax official or any former officer, employee, or local tax official A person who violates the provisions of this section shall be is guilty of a misdemeanor and may be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the court; and if (\$1,000), imprisoned for up to two years, or both. If the person committing the violation is a public an officer or employee, that person shall be dismissed from such office or

1 employment, and may not hold any public office or employment in
2 this State for a period of five years thereafter.

3 ~~Notwithstanding the provisions of this section, the Secretary~~
4 ~~of Revenue may permit the Commissioner of Internal Revenue of the~~
5 ~~United States, or the revenue officer of any other state imposing~~
6 ~~any of the taxes imposed in this Subchapter, or the duly~~
7 ~~authorized representative of either, to inspect the report or~~
8 ~~return of any taxpayer; or may furnish that person an abstract of~~
9 ~~the report or return of any taxpayer; or supply that person with~~
10 ~~information concerning any item contained in any report or~~
11 ~~return, or disclosed by the report of any investigation of any~~
12 ~~report or return of any taxpayer. The permission, however, may~~
13 ~~be granted or the information furnished to the officer or agent~~
14 ~~only if the statutes of the United States or of the other state~~
15 ~~grant substantially similar privilege to the Secretary of Revenue~~
16 ~~of this State or the Secretary's duly authorized representative.~~
17 ~~Notwithstanding any other provision of law, the Secretary may~~
18 ~~also furnish names, addresses, and account and identification~~
19 ~~numbers of (i) taxpayers who may be entitled to property held in~~
20 ~~the Escheat Fund to the Department of State Treasurer when that~~
21 ~~Department requests the information for the purpose of~~
22 ~~administering Chapter 116B of the General Statutes, and (ii)~~
23 ~~taxpayers to the Employment Security Commission when that~~
24 ~~Commission requests the information for the purpose of~~
25 ~~administering Article 2 of Chapter 96 of the General Statutes.~~
26 ~~Neither this section nor any other law prevents the exchange of~~
27 ~~information between the Department of Revenue and the Department~~
28 ~~of Transportation's Division of Motor Vehicles when the~~
29 ~~information is needed by either to administer the laws with which~~
30 ~~they are charged. Notwithstanding any other provision of law,~~
31 ~~State officers and employees who perform computerized data~~
32 ~~processing functions pursuant to G.S. 143-341(9) for the~~
33 ~~Department of Revenue are authorized to receive and process for~~
34 ~~the Department of Revenue information in reports and returns and~~
35 ~~are subject to the criminal provisions of this section.~~

36 ~~Notwithstanding the provisions of this section, the Secretary~~
37 ~~of Revenue may contract with any person, firm or corporation to~~
38 ~~receive and address, sort, bag, or deliver to the United States~~
39 ~~Postal Service any bulk mailing originated by the Department of~~
40 ~~Revenue, and may deliver the mail to the contractor pursuant to~~
41 ~~the contract. To ensure performance of the contract, the~~
42 ~~contractor shall furnish a bond in a form and amount acceptable~~
43 ~~to the Secretary.~~

1 (c) Definitions.-- The following definitions apply in this
2 section:

3 (1) Employee or officer. The term includes a former
4 employee, a former officer, and a current or former
5 member of a State or local board or commission
6 created to advise the State or a unit of local
7 government or to fulfill a duty delegated by the
8 State or the unit of local government.

9 (2) Tax information. Any information from any source
10 concerning the liability of a taxpayer for a tax
11 imposed by the State or a unit of local government.
12 The term includes the following:

13 a. Information contained on a tax return, a tax
14 report, or an application for a license for
15 which a tax is imposed.

16 b. Information obtained through an audit of a
17 taxpayer or by correspondence with a taxpayer.

18 c. Information on whether a taxpayer has filed a
19 tax return or a tax report.

20 d. A list or other compilation of the names,
21 addresses, social security numbers, or similar
22 information concerning taxpayers.

23 The term does not include information submitted to
24 the Business License Information Office of the
25 Department of Secretary of State on a master
26 application form for various business licenses."

27 Sec. 2. G.S. 75-28 reads as rewritten:

28 "§ 75-28. Unauthorized disclosure of tax information; violation a
29 misdemeanor.

30 Except in accordance with proper judicial order, or as
31 otherwise provided by law, it shall be unlawful for any person,
32 firm or corporation employed or engaged to prepare, or who or
33 which prepares or undertakes to prepare, for any other person or
34 taxpayer any tax form, report or return, to disclose, divulge or
35 make known in any manner or use for any purpose or in any manner
36 other than in the preparation of such form, report or return,
37 without the express consent of the taxpayer or person for whom
38 the form or return is prepared, the name or address of the
39 taxpayer or such other person, the amount of income, income tax
40 or other taxes, or any other information shown on or included in
41 such form, report or return, or any information which may be or
42 may have been furnished by the taxpayer or such other person to
43 the preparer of such form, report or return or to the person,
44 firm or corporation so employed or engaged.

~~1 Nothing in this section shall be construed to amend or modify
2 the authority specified in G.S. 105-276(6) or any statute enacted
3 in substitution therefor.~~

~~4 Nothing in this section shall be construed to prohibit the
5 inspection of such forms, reports or returns required under
6 Subchapter I of Chapter 105 of the General Statutes in accordance
7 with the authority provided in G.S. 105-259, or the examination
8 of any person, books, papers, records or other data in accordance
9 with the authority provided in G.S. 105-258.~~

10 Any person, firm or corporation, or any officer, agent, clerk,
11 employee, or former officer or employee, of any firm or
12 corporation engaged or formerly engaged in the preparation of tax
13 forms, reports or returns for others, whether acting for himself
14 or as agent for such corporation, who or which shall violate the
15 provisions of this section shall be guilty of a misdemeanor and
16 shall be fined or imprisoned in the discretion of the court.

17 Sec. 3. G.S. 105-251.1(e) reads as rewritten:

18 " (e) The North Carolina State Bureau of Investigation shall,
19 ~~through designation by the Attorney General pursuant to G.S.~~
20 ~~105-259, have access to and shall be authorized to may~~ inspect
21 and copy any reports filed with the Department pursuant to this
22 section."

23 Sec. 4. G.S. 105-449.57 reads as rewritten:

24 "§ 105-449.57. Cooperative agreements between states.

25 The Secretary may enter into cooperative agreements with other
26 states for exchange of information in administering the tax
27 imposed by this Article. No agreement, arrangement, declaration,
28 or amendment to an agreement is effective until stated in writing
29 and approved by the Secretary.

30 An agreement may provide for determining the base state for
31 motor carriers, records requirements, audit procedures, exchange
32 of information, persons eligible for tax licensing, defining
33 qualified motor vehicles, determining if bonding is required,
34 specifying reporting requirements and periods, including defining
35 uniform penalty and interest rates for late reporting,
36 determining methods for collecting and forwarding of gasoline or
37 other motor fuel taxes and penalties to another jurisdiction, and
38 such other provisions as will facilitate the administration of
39 the agreement.

40 ~~Notwithstanding the provisions of G.S. 105-259 to the contrary,~~
41 ~~In accordance with G.S. 105-259, the Secretary may, as required~~
42 ~~by the terms of an agreement, forward to officials of another~~
43 ~~state any information in the Department's possession relative to~~
44 ~~the use of gasoline or other motor fuels by any motor carrier.~~

1 The Secretary may disclose to officials of another state the
2 location of offices, motor vehicles, and other real and personal
3 property of motor carriers.

4 An agreement may provide for each state to audit the records of
5 motor carriers based in the state to determine if the gasoline or
6 other motor fuel taxes due each state are properly reported and
7 paid. Each state shall forward the findings of the audits
8 performed on motor carriers based in the state to each state in
9 which the carrier has taxable use of gasoline or other motor
10 fuels. For motor carriers not based in this State who have
11 taxable use of gasoline or other motor fuels in this State, the
12 Secretary may utilize the audit findings received from another
13 state as the basis upon which to propose assessments of gasoline
14 or other motor fuel taxes against the carrier as though the audit
15 had been conducted by the Secretary. Penalties and interest
16 shall be assessed at the rates provided in the agreement.

17 No agreement entered into pursuant to this section may preclude
18 the Department from auditing the records of any motor carrier
19 covered by this Chapter.

20 The provisions of Article 9 of this Chapter apply to any
21 assessment or order made under this section.

22 The Secretary may not enter into any agreement that would
23 increase or decrease taxes and fees imposed under Subchapter V of
24 Chapter 105 of the General Statutes, and any provision to the
25 contrary is void."

26 Sec. 5. G.S. 132-1.1 reads as rewritten:

27 "§ 132-1.1. Confidential communications by legal counsel to
28 public board or agency; ~~not public records, tax information.~~

29 (a) Confidential Communications.-- Public records, as defined
30 in G.S. 132-1, shall not include written communications (and
31 copies thereof) to any public board, council, commission or other
32 governmental body of the State or of any county, municipality or
33 other political subdivision or unit of government, made within
34 the scope of the attorney-client relationship by any
35 attorney-at-law serving any such governmental body, concerning
36 any claim against or on behalf of the governmental body or the
37 governmental entity for which such body acts, or concerning the
38 prosecution, defense, settlement or litigation of any judicial
39 action, or any administrative or other type of proceeding to
40 which the governmental body is a party or by which it is or may
41 be directly affected. Such written communication and copies
42 thereof shall not be open to public inspection, examination or
43 copying unless specifically made public by the governmental body
44 receiving such written communications; provided, however, that

1 such written communications and copies thereof shall become
2 public records as defined in G.S. 132-1 three years from the date
3 such communication was received by such public board, council,
4 commission or other governmental body.

5 (b) Tax Information.-- Tax information is a public record but
6 may not be disclosed except as provided in G.S. 105-259. As used
7 in this subsection, 'tax information' has the same meaning as in
8 G.S. 105-259."

9 Sec. 6. G.S. 132-3 reads as rewritten:

10 "§ 132-3. Destruction of records regulated.

11 (a) Prohibition.-- No public official may destroy, sell, loan,
12 or otherwise dispose of any public record, except in accordance
13 with G.S. 121-5, without the consent of the Department of
14 Cultural Resources. Whoever unlawfully removes a public record
15 from the office where it is usually kept, or alters, defaces,
16 mutilates or destroys it shall be guilty of a misdemeanor and
17 upon conviction fined not less than ten dollars (\$10.00) nor more
18 than five hundred dollars (\$500.00).

19 (b) Revenue Records.-- Notwithstanding subsection (a) and G.S.
20 121-5, when a record of the Department of Revenue has been
21 photographed, photocopied, or microphotocopied, the original
22 record may be destroyed upon the order of the Secretary of
23 Revenue. If a record of the Department of Revenue has not been
24 photographed, photocopied, or microphotocopied, the original
25 record shall be preserved for at least three years. After three
26 years the original record may be destroyed upon the order of the
27 Secretary of Revenue."

28 Sec 6. This act is effective upon ratification.

Explanation of Proposal 23

This proposal stems from a need of the Business License Information Office of the Department of Secretary of State to obtain information from the Department of Revenue on the status of a taxpayer's application for various privilege licenses for which taxes are imposed under Chapter 105 of the General Statutes. The Business License Information Office is charged with implementing a master application form for various licenses and with helping citizens obtain the necessary privilege licenses before engaging in business. That Office cannot fulfill its duty under current law, however, because G.S. 105-259, the "tax secrecy provision," prohibits the disclosure of information on the status of an application for a privilege license. Consequently, the Business License Information Office cannot provide a citizen much help in obtaining the required licenses.

In reviewing G.S. 105-259 to make the changes needed to accommodate the Business License Information Office, the Revenue Laws Study Committee decided to rewrite the statute to make it understandable. The Committee found the current statute long, poorly organized, and confusing. In rewriting the statute, the Committee expanded the scope of information that can be exchanged by creating an exception for certain information furnished to the Business License Information Office and by allowing the exchange of information with certain designated agencies.

Under the proposal the Department of Revenue can share certain tax information with several agencies with which it cannot now share information. The proposal allows the Department to exchange tax information with any federal agency charged with collecting a tax. Under current law, information can only be exchanged with the Internal Revenue Service. The proposal also allows the Department to exchange information on license and excise taxes with the North Carolina Alcoholic Beverage Control Commission, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety, and the federal Bureau of Alcohol, Tobacco, and Firearms. Under current law, the Department of Revenue cannot exchange any information with these agencies.

Finally, the proposal excludes information submitted to the Business License Information Office on a master application form from the definition of tax information. This change makes the information submitted on a master application form accessible to

the various agencies that need to see the form to be able to process the applications included on the form and makes the information available to the public. All the tax licenses included on the master application form must be displayed at a place of business and are, to that extent, already available to the public.

In addition to making the described modifications to G.S. 105-259, the proposal makes conforming changes to various statutes. It also moves provisions that are unrelated to the disclosure of tax information from G.S. 105-259 to more appropriate statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

PROPOSAL 24 (91-LCX-001(9.24))
THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: Representatives Lilley; Abernethy, Brawley, Hasty.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS AND RELATED
STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General
Statutes is amended by adding a new section to read:

"§ 105-33.1 Definitions.

The following definitions apply in this Article:

(1) Code. The Internal Revenue Code as enacted as of
January 1, 1991, including any provisions enacted
as of that date which become effective either
before or after that date.

(2) Municipality. A municipal corporation organized
under the laws of this State.

(3) Person. An individual, a firm, a partnership, an
association, a corporation, or another organization
or group acting as a unit.

(4) Secretary. The Secretary of Revenue."

Sec. 2. G.S. 105-37.1(d) reads as rewritten:

"(d) It is not the purpose of this Article to discourage
agricultural fairs in the State, and to further this cause, no
carnival company taxable under this section ~~will be allowed to~~
may play a 'still date' in any county where there is a regularly

1 advertised agricultural fair, 30 days prior to the dates of the
2 fair. ~~Nothing contained in this section shall prevent veterans'~~
3 ~~organizations and posts chartered by Congress or organized and~~
4 ~~operated on a statewide or nationwide basis from holding fairs or~~
5 ~~tobacco festivals on any dates which they may select, provided~~
6 ~~such fairs or festivals have been held as annual events prior to~~
7 ~~1 July 1988. This subsection does not restrict the date on which~~
8 ~~a fair or tobacco festival may be held if (i) it is held by a~~
9 ~~veteran's organization or post chartered by Congress or organized~~
10 ~~and operated on a statewide or nationwide basis and (ii) the~~
11 ~~organization or post has held the fair or festival annually since~~
12 ~~before July 1, 1988."~~

13 Sec. 3. G.S. 105-83(d) reads as rewritten:

14 "(d) This section ~~shall does not apply to corporations organized~~
15 ~~under the State or national banking laws. liable for the tax~~
16 ~~levied under G.S. 105-102.3."~~

17 Sec. 4. G.S. 105-88(b) reads as rewritten:

18 "(b) Nothing in this section shall be construed to apply to
19 banks, industrial banks, trust companies, building and loan
20 associations, ~~cooperative credit unions, nor installment paper~~
21 ~~dealers defined and taxed under other sections of this Article,~~
22 ~~or cooperative credit unions,~~ nor shall it apply to the business
23 of negotiating loans on real estate as described in G.S. 105-41,
24 nor to pawnbrokers lending or advancing money on specific
25 articles of personal property, nor to insurance premium finance
26 companies licensed under Article 35 of Chapter 58 of the General
27 Statutes. It shall apply to those persons or concerns operating
28 what are commonly known as loan companies or finance companies
29 and whose business is as hereinbefore described, and those
30 persons, firms, or corporations pursuing the business of lending
31 money and taking as security for the payment of such loan and
32 interest an assignment of wages or an assignment of wages with
33 power of attorney to collect same, or other order or chattel
34 mortgage or bill of sale upon household or kitchen furniture. No
35 real estate mortgage broker shall be required to obtain a
36 privilege license under this section merely because he advances
37 his own funds and takes a security interest in real estate to
38 secure such advances and when, at the time of such advance of his
39 own funds, he has already made arrangements with others for the
40 sale or discount of the obligation at a later date and does so
41 sell or discount such obligation within the period specified in
42 said arrangement or extensions thereof; or when, at the time of
43 the advance of his own funds, he intends to sell the obligation
44 to others at a later date and does, within 12 months from date of

1 initial advance, make arrangements with others for the sale of
2 said obligation and does sell the obligation within the period
3 specified in said arrangement or extensions thereof; or because
4 he advances his own funds in temporary financing directly
5 involved in the production of permanent-type loans for sale to
6 others; and no real estate mortgage broker whose mortgage lending
7 operations are essentially as described above shall be required
8 to obtain a privilege license under this section."

9 Sec. 5. G.S. 105-102.5(b)(10) reads as rewritten:

10 "(10) Manufacturing ice cream using counter freezer
11 equipment and selling the ice cream at retail; and
12 selling at retail ice cream purchased from a
13 manufacturer other than a manufacturer who has
14 paid the tax imposed in G.S. 105-97(a). For the
15 purpose of this subdivision, 'ice cream' means ice
16 cream, frozen custards, sherbets, water ices,
17 yogurt, and/or similar frozen products."

18 Sec. 6. G.S. 105-130.27(f) and G.S. 105-151.6(f) are
19 repealed.

20 Sec. 7. G.S. 105-131.8(b) reads as rewritten:

21 "(b) Each shareholder of an S Corporation ~~shall be is~~ allowed
22 as a credit against the tax imposed by Division II of this
23 Article in an amount equal to the shareholder's pro rata share of
24 the tax credits for which the S Corporation is eligible."

25 Sec. 8. G.S. 105-134.2(b) reads as rewritten:

26 "(b) In lieu of the tax imposed by subsection (a) of this
27 section, there is imposed for each taxable year upon the North
28 Carolina taxable income of every individual a tax determined
29 under tables, applicable to the taxable year, which may be
30 prescribed by the ~~Secretary of Revenue.~~ Secretary. ~~The tables~~
31 ~~prescribed under this subsection shall be in the form the~~
32 ~~Secretary deems appropriate, and the~~ The amounts of the tax
33 determined under the tables shall be computed on the basis of the
34 rates prescribed by subsection (a) of this section. This
35 subsection does not apply to an individual making a return under
36 section 443(a)(1) of the Code for a period of less than 12 months
37 on account of a change in the individual's annual accounting
38 period, or to an estate or trust. The tax imposed by this
39 subsection shall be treated as the tax imposed by subsection (a)
40 of this section."

41 Sec. 9. G.S. 105-134.6(c)(2) reads as rewritten:

42 "(2) Any amount allowed as a deduction from gross income
43 under the Code that is taxed under the Code by a
44 separate tax other than the tax imposed in section

1 1 of the Code. ~~The Secretary shall report to the~~
2 ~~1991 General Assembly all provisions under the Code~~
3 ~~for taxing certain amounts separately and shall~~
4 ~~recommend whether those amounts should be taxed~~
5 ~~separately under this Division or should be added~~
6 ~~to taxable income in calculating North Carolina~~
7 ~~taxable income."~~

8 Sec. 10. G.S. 105-151.12(e) reads as rewritten:

9 "(e) In the case of marshland for which a claim has been filed
10 pursuant to G.S. 113-205, the offer of donation must be made
11 before ~~31 December 1994~~ December 31, 1994, to qualify for the
12 credit allowed by this section."

13 Sec. 11. G.S. 105-151.20 reads as rewritten:

14 "§ 105-151.20. Credit for tax paid on certain government
15 retirement benefits.

16 A taxpayer who received government retirement benefits during
17 the 1988 tax year may claim a credit against the tax imposed by
18 this Division equal to the amount by which the tax under this
19 Division paid by the taxpayer for the 1988 tax year would have
20 been reduced if none of the taxpayer's government retirement
21 benefits had been included in the taxpayer's taxable income. If
22 a taxpayer received a refund of any tax paid under this Division
23 on government retirement benefits for the 1988 tax year, the
24 amount of the refund reduces the amount of the credit allowed
25 under this section.

26 As used in this section, the term 'government retirement
27 benefits' means retirement benefits received from one or more
28 state, local, or federal government retirement plans. As used in
29 this section, the term '1988 tax year' means the taxpayer's
30 taxable year beginning on a day in 1988.

31 The credit allowed under this section shall ~~shall~~ be taken in
32 equal installments over the taxpayer's first three taxable years
33 beginning on or after January 1, 1990. The credit allowed under
34 this section may not exceed the amount of tax imposed by this
35 Division reduced by the sum of all credits allowed against the
36 tax, except payments of tax made by or on behalf of the
37 taxpayer."

38 Sec. 12. G.S. 105-155(c) reads as rewritten:

39 "(c) There shall be annexed to the return the affirmation of
40 the taxpayer making the return in the following form: 'Under
41 penalties prescribed by law, I hereby affirm that to the best of
42 my knowledge and belief this return, including any accompanying
43 schedules and statements, is true and complete.' ~~complete. (If~~
44 If the return was prepared by a person other than the taxpayer,

1 ~~that the preparer's affirmation shall state that it is based on~~
2 ~~all information of which the preparer has any knowledge.)'~~
3 knowledge. The Secretary shall prepare blank forms for the
4 returns, distribute them throughout the State, and furnish them
5 upon application; but failure to receive or secure the form shall
6 not relieve any taxpayer from the obligation of filing a return
7 required by this Division."

8 Sec. 13. G.S. 105-159.1(a) reads as rewritten:

9 "(a) Every individual whose income tax liability for the
10 taxable year is one dollar (\$1.00) or more may designate on his
11 or her income tax return that one dollar (\$1.00) of the ~~amount of~~
12 ~~tax paid by him or her to the Department~~ tax shall be paid to the
13 State Treasurer for the use of all political parties. In the
14 case of a married couple filing a joint return whose income tax
15 liability for the taxable year is two dollars (\$2.00) or more,
16 each spouse may designate on the income tax return that one
17 dollar (\$1.00) of the tax shall be paid to the State Treasurer
18 for the use of all political parties. ~~by the Secretary~~ The
19 Secretary shall credit all amounts so designated to the State
20 Treasurer for the use of all political parties upon a pro rata
21 basis according to their respective party voter registrations
22 according to the most recent certification of the State Board of
23 Elections. ~~Elections; Provided, however, that no political party~~
24 ~~with less than one percent (1%) of the total number of registered~~
25 ~~voters in the State shall receive any of these funds, and the~~
26 ~~registration of such a party shall not be included in calculating~~
27 ~~the pro rata distribution.~~ As used in this section, the term
28 'political party' means one of the following that has at least
29 one percent (1%) of the total number of registered voters in the
30 State:

31 (1) ~~a~~ A political party ~~which that~~ at the last
32 preceding general State election received at least
33 ten percent (10%) of the entire vote cast in the
34 State for Governor or for presidential ~~electors,~~
35 electors.

36 (2) ~~a~~ A group of voters who by July 1 of the preceding
37 calendar year, by virtue of a petition as a new
38 political party, had duly qualified as a new
39 political party within the meaning of Chapter 163
40 of the General Statutes."

41 Sec. 14. (a) G.S. 105-163.07 is recodified as G.S.
42 105-151.21 and reads as rewritten:

~~1 "§ 105-163.07. Income tax credit for property taxes paid on farm
2 machinery by individuals and certain corporations. 105-151.21.
3 Credit for property taxes paid on farm machinery.~~

~~4 (a) Credit. An individual farmer, or a corporation that is
5 engaged in the business of farming and has elected to be treated
6 as an "S corporation" under the Code, that pays property taxes on
7 farm machinery, or attachments and repair parts for farm
8 machinery, is allowed a credit against the tax imposed by this
9 Division equal to the amount of property taxes the individual
10 paid at par during the taxable year on farm machinery and on
11 attachments and repair parts for farm machinery. In addition, an
12 individual shareholder of an S Corporation engaged in the
13 business of farming is allowed a credit against the tax imposed
14 by this Division equal to the shareholder's pro rata share of the
15 amount of property taxes the S Corporation paid at par during the
16 taxable year on farm machinery and on attachments and repair
17 parts for farm machinery. The total credit allowed under this
18 section may not exceed one thousand dollars (\$1,000) for the
19 taxable year and may not exceed the amount of tax imposed by this
20 Division for the taxable year reduced by the sum of all credits
21 allowed under this Division, except payments of tax made by or on
22 behalf of the taxpayer. To claim the credit, the taxpayer shall
23 attach to the return a copy of the tax receipt for the property
24 taxes for which credit is claimed. The receipt must indicate
25 that the taxes have been paid and the amount and date of the
26 payment.~~

~~27 (b) Definitions. The following definitions apply in this
28 section:~~

~~29 (1) Farm machinery. Machinery subject to State sales
30 tax at the rate of one percent (1%) under G.S.
31 105-164.4(a)(1d)a.~~

~~32 (2) Property taxes. The principal amount of taxes
33 levied and assessed by a taxing unit under the
34 Machinery Act. The term does not include costs,
35 penalties, interest, or other charges that may be
36 added to the principal amount.~~

~~37 (3) Taxing unit. Defined in G.S. 105-273.~~

~~38 (c) Adjustment. If a taxing unit gives a taxpayer a credit or
39 refund for any of the property taxes for which the taxpayer
40 claimed a credit under this section, the taxpayer shall notify
41 the Secretary within 90 days. The Secretary shall then recompute
42 the credit allowed under this section and make any resulting
43 adjustment of income tax for the taxable year for which the
44 credit was claimed.~~

~~1 credit, not to exceed one thousand dollars (\$1,000), against the~~
~~2 income tax imposed by this Article equal to the amount of~~
~~3 property taxes paid, at par by that individual or corporation~~
~~4 during the taxable year, on the farm machinery and attachments~~
~~5 and repair parts for the machinery. As used in this section,~~
~~6 "farm machinery" means machinery that:~~

~~7 (1) Is used in planting, cultivating, harvesting, or curing~~
~~8 farm crops or in producing dairy products, poultry, eggs, or~~
~~9 livestock; and~~

~~10 (2) Is subject to State sales tax at the rate of one percent~~
~~11 (1%) under G.S. 105-164.4(1)g."~~

~~12 (b) The remainder of Division IV of Article 4 of Chapter~~
~~13 105 of the General Statutes is repealed.~~

~~14 (c) G.S. 105-320(a)(16) reads as rewritten:~~

~~15 "(16) The total assessed value of farm machinery,~~
~~16 attachments, and repair parts of individual owners~~
~~17 and Subchapter "S" S corporations engaged in~~
~~18 farming subject to the income tax credit in G.S.~~
~~19 105-163.07 105-151.21 and the amount of ad valorem~~
~~20 taxes due by an individual farmer or a Subchapter~~
~~21 "S" S corporation engaged in farming on farm~~
~~22 machinery, attachments, and repair parts subject to~~
~~23 that credit."~~

~~24 Sec. 15. G.S. 105-164.3(5) reads as rewritten:~~

~~25 "(5) 'Engaged in business' shall mean means maintaining,~~
~~26 occupying or using permanently or temporarily,~~
~~27 directly or indirectly, or through a subsidiary or~~
~~28 agent, by whatever name called, any office, place~~
~~29 of distribution, sales or sample room or place,~~
~~30 warehouse or storage place, or other place of~~
~~31 business, for the selling or delivering of tangible~~
~~32 personal property for storage, use or consumption~~
~~33 in this State, or permanently or temporarily,~~
~~34 directly or through a subsidiary, having any~~
~~35 representative, agent, salesman, canvasser or~~
~~36 solicitor operating in this State in such selling~~
~~37 or delivering, and the fact that any corporate~~
~~38 retailer, agent or subsidiary engaged in business~~
~~39 in this State may not be legally domesticated or~~
~~40 qualified to do business in this State shall be is~~
~~41 immaterial. It shall also mean the also means~~
~~42 maintaining in this State, either permanently or~~
~~43 temporarily, directly or through a subsidiary,~~
~~44 tangible personal property for the purpose of lease~~

1 or rental. It ~~shall also mean~~ also means making a
2 mail order sale, as defined in ~~subdivision (8a)~~ of
3 this section, if one of the conditions listed in
4 G.S. 105-164.8(b) is met."

5 Sec. 16. G.S. 105-164.8(b) reads as rewritten:

6 "(b) A retailer who makes a mail order sale is engaged in
7 business in this State and is subject to the tax levied under
8 this Article if one of the following conditions is met:

- 9 (1) The retailer is a corporation engaged in business
10 under the laws of this State or a person domiciled
11 in, a resident of, or a citizen of, this State;
- 12 (2) The retailer maintains retail establishments or
13 offices in this State, whether the mail order sales
14 thus subject to taxation by this State result from
15 or are related in any other way to the activities
16 of such establishments or offices;
- 17 (3) The retailer has representatives in this State who
18 solicit business or transact business on behalf of
19 the retailer, whether the mail order sales thus
20 subject to taxation by this State result from or
21 are related in any other way to such solicitation
22 or transaction of business;
- 23 ~~(4) The property was delivered in this State in~~
24 ~~fulfillment of a sales contract that was entered~~
25 ~~into in this State, in accordance with applicable~~
26 ~~conflict of laws rules, when a person in this State~~
27 ~~accepted an offer by ordering the property;~~
- 28 (5) The retailer, by purposefully or systematically
29 exploiting the market provided by this State by any
30 media-assisted, media-facilitated, or media-
31 solicited means, including direct mail advertising,
32 distribution of catalogues, computer-assisted
33 shopping, television, radio or other electronic
34 media, telephone solicitation, magazine or
35 newspaper advertisements, or other media, creates
36 nexus with this State;
- 37 (6) Through compact or reciprocity with another
38 jurisdiction of the United States, that
39 jurisdiction uses its taxing power and its
40 jurisdiction over the retailer in support of this
41 State's taxing power; or
- 42 (7) The retailer consents, expressly or by implication,
43 to the imposition of the tax imposed by this
44 Article. For purposes of this subdivision,

evidence that a retailer engaged in the activity described in subdivision (5) shall be prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article."

Sec. 17. G.S. 105-164.13(14) reads as rewritten:

"(14) ~~Holy Bibles; public~~ Public school books on the adopted list, the selling price of which is fixed by State contract."

Sec. 18. G.S. 105-164.44A is repealed.

Sec. 19. G.S. 105-265 is repealed.

Sec. 20. G.S. 105-130.35 is recodified as G.S. 105-269.5 and reads as rewritten:

~~"§ 105-130.35. Contribution of corporate income tax refunds to Wildlife Fund for management of nongame and endangered species.~~
105-269.5. Contribution of income tax refund to Wildlife Fund.

~~Any taxpayer that is entitled to a refund of income taxes paid as provided by this Article under Article 4 of this Chapter may elect to contribute all or any part of such part of the refund to the Wildlife Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened. The Secretary of Revenue shall provide appropriate language and space on the corporation income tax form in which to make the election. such election and shall note the same in his instructions as a contribution qualifying as a deduction under G.S. 105-130.9(2). Any such The taxpayer's election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. All of such contributions shall be transmitted~~ The Secretary of Revenue shall transmit the contributions made pursuant to this section to the State Treasurer for credit to the Wildlife Fund which shall be made available to the to be used by the Wildlife Resources Commission only for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for such these purposes."

Sec. 21. Article 9 of Chapter 105 of the General Statutes, as amended by this act, is further amended by adding at the end a new section to read:

"§ 105-269.6. Contribution of individual income tax refund to Candidates Financing Fund.

An individual entitled to a refund of income taxes under Division II of Article 4 of this Chapter may elect to contribute all or part of the refund to the North Carolina Candidates

1 Financing Fund for the use of political campaigns as provided in
2 Article 22C of Chapter 163 of the General Statutes. The
3 Secretary of Revenue shall provide appropriate language and space
4 on the individual income tax form in which to make the election.
5 The election becomes irrevocable upon filing the individual's
6 income tax return for the taxable year. The Secretary of Revenue
7 shall, on a quarterly basis, transmit the the contributions made
8 pursuant to this section to the State Treasurer for credit to the
9 North Carolina Candidates Financing Fund. Any interest earned on
10 funds so credited shall be credited to that Fund."

11 Sec. 22. G.S. 105-163.16 reads as rewritten:

12 "§ 105-163.16. Overpayment refunded.

13 (a) Where the amount of wages withheld at the source under G.S.
14 105-163.2 exceeds the tax imposed by Article 4 of this Chapter
15 against which the tax so withheld may be credited under G.S.
16 105-163.10, the ~~amount of such excess~~ shall be considered an
17 overpayment by the employee. ~~employee, and, notwithstanding the~~
18 ~~provisions of G.S. 105-266 and 105-266.1, overpayment by the~~
19 ~~employee shall be refunded by the Secretary under the provisions~~
20 ~~of this section unless the taxpayer elects to apply the~~
21 ~~overpayment to his estimated income tax liability for the~~
22 ~~following year pursuant to G.S. 105-269.4.~~

23 (b) If the amount of estimated tax paid under G.S. 105-163.15
24 exceeds the taxes imposed by Article 4 of this Chapter against
25 which the estimated tax so paid may be credited under the
26 provisions of this Article, the excess shall be considered an
27 overpayment by the taxpayer. ~~taxpayer, and, notwithstanding the~~
28 ~~provisions of G.S. 105-266 and G.S. 105-266.1, this overpayment~~
29 ~~by the taxpayer shall be refunded by the Secretary under the~~
30 ~~provisions of this section unless the taxpayer elects to apply~~
31 ~~the overpayment to his estimated income tax liability for the~~
32 ~~following year pursuant to G.S. 105-269.4.~~

33 (c) ~~Where there has been an overpayment (as specified in~~
34 ~~subsections (a) and (b) of this section) Notwithstanding G.S.~~
35 ~~105-266 and G.S. 105-266.1, an overpayment of any tax imposed~~
36 ~~under Article 4 of this Chapter, as disclosed by the taxpayer's~~
37 ~~annual return required to be filed by Article 4, the amount of~~
38 ~~such overpayment shall be refunded to the taxpayer; taxpayer~~
39 subject to the following exceptions:

40 (1) The taxpayer may elect to apply the overpayment to
41 another purpose as provided in Article 9 of this
42 Chapter.

(2) If the amount of the overpayment is less than one dollar (\$1.00), it will be refunded only upon the taxpayer's written demand for a refund.

(3) There will be no refund of any part of the overpayment set off under the Set-off Debt Collection Act, Chapter 105A.

~~except that overpayments of less than one dollar (\$1.00) shall be refunded only upon receipt by the Secretary of a written demand for such refund from the taxpayer and except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act.~~ Every refund authorized by this section shall be made as expeditiously as possible, possible after the taxpayer files the final return, and within six months from after the date on which the annual final return is filed or due to be filed, whichever is later, insofar as practical. ~~the same is practicable; except that no refunds for overpayment of estimated tax shall be made by the Secretary prior to the date on which the final return is filed by the taxpayer.~~ No interest shall be paid with respect to any such refund if the refund is made within the six months' period above referred to. refund made within this six-month period. Refunds made after the end of the six-month period shall bear interest Interest computed at the rate established in G.S. 105-241.1(i) for assessments shall be paid on refunds made after the expiration of said six months' period, such interest to be computed from the time of the expiration of said six months' from the end of the six-month period until paid. It shall not be is not necessary for the Attorney General or any member of his staff to approve such refund. to approve the refund. The making of such the refund does not absolve any taxpayer of any income tax liability which may in fact exist and the Secretary may make any assessment for any deficiency in the manner provided in Article 9 of this Chapter. No overpayment of tax by the taxpayer shall be refunded irrespective of whether upon discovery or receipt of written demand if such the discovery is not made or such the demand is not received within three years from the date set by the statute for the filing of the annual return by the taxpayer or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later.

(d) ~~When a husband and wife have elected under G.S. 105-152.1 to file filed~~ a joint return and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to the refund.

~~(e) Any taxpayer who is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of the refund to the Wildlife Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. All of the contributions made pursuant to this subsection shall be transmitted to the State Treasurer for credit to the Wildlife Fund which shall be made available to the Wildlife Resources Commission for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for these purposes.~~

~~(f) Any taxpayer who is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of the refund to the North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall, on a quarterly basis, transmit the the contributions made pursuant to this subsection to the State Treasurer for deposit in the North Carolina Candidates Financing Fund. Any interest earned on funds so deposited shall be credited to that Fund."~~

31 Sec. 23. G.S. 113A-39 reads as rewritten:

32 "§ 113A-39. Claim and allowance of charitable deduction for
33 contribution or gift of easement.

34 The contribution or donation of a 'scenic easement,' right-
35 of-way or any other easement or interest in land to the State of
36 North Carolina, as provided in this Article, shall be deemed a
37 contribution to the State of North Carolina within the provisions
38 of G.S. 105-130.9 and 105-147(16). section 170(c)(1) of the
39 Internal Revenue Code. The value of the contribution or donation
40 shall be the fair market value of the easement or other interest
41 in land when the contribution or donation is made."

42 Sec. 24. G.S. 131C-5 reads as rewritten:

43 "§ 131C-5. Exemptions.

1 (a) Any person who solicits charitable contributions for a
2 religious purpose or on behalf of a person established for a
3 religious purpose shall not be required to apply for a license.

4 (b) Solicitation of charitable contributions by the federal,
5 State or local government, or any agency thereof, shall not be
6 subject to this ~~Article [Chapter]~~ Chapter. For purposes of this
7 subsection any volunteer fire department or rescue squad which
8 receives any funds from federal, State, or local government shall
9 be considered an agency thereof.

10 (c) Any person who receives less than ten thousand dollars
11 (\$10,000) in contributions in any calendar year and does not
12 provide compensation to any officer, trustee, organizer,
13 incorporator, fund-raiser or professional solicitor shall not be
14 required to apply for a license.

15 (d) Any educational institution, the curriculum of which in
16 whole or in part, is registered, approved or accredited by the
17 Southern Association of Colleges and Schools or an equivalent
18 regional accrediting body; any educational institution in
19 compliance with Article 39 of Chapter 115C of the General
20 Statutes; and any foundation or department having an established
21 identity with any of the aforementioned educational institutions
22 shall not be required to apply for a license.

23 (e) Any hospital licensed pursuant to ~~Article 13A of Chapter~~
24 ~~131 Article 5 of Chapter 131E~~ of the General Statutes and any
25 foundation or department having an established identity with the
26 aforementioned hospital shall not be required to apply for a
27 license; Provided, however, that the governing board of the
28 hospital authorizes the solicitation and receives an accounting
29 of the funds collected and expended.

30 (f) Any noncommercial radio or television station shall not be
31 required to apply for a license.

32 (g) ~~Any public supported community foundation or public~~
33 ~~supported community trust as defined by G.S. 105-147(16) shall~~
34 ~~not be A qualified community trust as provided in 26 C.F.R. §~~
35 ~~1.170A-9(e)(10) through (e)(14) is not~~ required to apply for a
36 license."

37 Sec. 25. G.S. 143-283.7 reads as rewritten:

38 "§ 143-283.7. Funds, expenses and gifts; reports.

39 There is hereby created in the State treasury a special
40 revolving fund to be known as 'Employment of the Handicapped
41 Revolving Fund.' The fund shall consist of all moneys received
42 by the Department of Administration, or in behalf of the
43 Department from the United States, any federal or State agency or
44 institution, gifts, contributions, donations and bequests, but

1 not excluding any other source of revenue for the purpose of
2 promoting the employment and rehabilitation of handicapped
3 citizens of North Carolina. The Department of Administration may
4 use said revolving fund to pay the salaries and general expenses
5 of the administrative office, personnel, materials, supplies,
6 equipment, travel; provide awards, citations, scholarships, but
7 not excluding other purposes for the promoting of the employment
8 and rehabilitation of handicapped citizens. All expenditures
9 from said fund shall be subject to the provisions of the
10 Executive Budget Act.

11 Any moneys remaining in said revolving fund at the end of any
12 fiscal year or biennium shall not revert to the general fund or
13 any other fund but shall continue to remain in said revolving
14 fund to be expended for the purposes of this Article.

15 The Department of Administration shall accept, hold in trust,
16 and authorize the use of any grant or devise of land, or any
17 donation or bequests of money or other personal property made to
18 the Department, so long as the terms of the grant, donation,
19 bequest or will are carried out. The Department of
20 Administration may invest and reinvest any funds and money,
21 lease, or sell any real or personal property, and invest the
22 proceeds for the purpose of promoting the employment and
23 rehabilitation of the handicapped unless prohibited by the terms
24 of the grant, donation, bequest, gift, or will. If, due to
25 circumstances, the requests of the person or persons, making the
26 grant, donation, bequest, gift, or will cannot be carried out,
27 the Department of Administration shall have the authority to use
28 the remainder thereof for the purpose of this Article. Said
29 funds shall be deposited in the revolving fund to carry out the
30 provisions of this Article. ~~Such gifts, donations, bequests, or~~
31 ~~grants shall be exempt for tax purposes.~~ The Department shall
32 report annually to the Governor all moneys and properties
33 received and expended by virtue of this section.

34 All funds and properties in the hands of the Governor's
35 Executive Committee on July 1, 1973, shall be transferred to the
36 Department of Administration for use in furtherance of the
37 purposes of this Article."

38 Sec. 26. G.S. 105-241.4 reads as rewritten:

39 "\$ 105-241.4. Action to recover tax paid.

40 Within 30 days after notification of the Secretary's decision
41 with respect to liability under this Subchapter or ~~under Article~~
42 ~~36 of~~ Subchapter V, any taxpayer aggrieved thereby, in lieu of
43 petitioning for administrative review thereof by the Tax Review

1 Board under G.S. 105-241.2, may pay the tax and bring a civil
2 action for its recovery as provided in G.S. 105-267.

3 Any taxpayer who has obtained an administrative review by the
4 Tax Review Board as provided by G.S. 105-241.2 and who is
5 aggrieved by the decision of the ~~said~~ Board may, in lieu of
6 appealing pursuant to the provisions of G.S. 105-241.3, within 30
7 days after notification of the Board's decision with respect to
8 liability pay the tax and bring a civil action for its recovery
9 as provided in G.S. 105-267.

10 Either party may appeal to the appellate division from the
11 judgment of the superior court under the rules and regulations
12 prescribed by law for appeals, except that if the Secretary, if
13 he should appeal, shall not be Secretary appeals, the Secretary
14 is not required to give any undertaking or make any deposit to
15 secure the cost of such the appeal.

16 Any taxes, interest or penalties paid and found by the court
17 to be in excess of those which can be properly assessed shall be
18 ordered refunded to the taxpayer with interest from time of
19 payment."

20 Sec. 27. G.S. 105-253(b)(3) reads as rewritten:

21 "(3) For all taxes due from the corporation pursuant to the
22 provisions of ~~Article 36 and Article 36A~~ of Subchapter V of this
23 Chapter."

24 Sec. 28. G.S. 105-262 reads as rewritten:

25 "~~§ 105-262. Rules and regulations.~~

26 The Secretary of Revenue ~~shall, from time to time, initiate~~
27 ~~and prepare such regulations, not inconsistent with law, as may~~
28 ~~be useful and necessary to implement the provisions of all the~~
29 ~~Articles of Subchapter I (except Article 8B) and Article 36 of~~
30 ~~Subchapter V, such regulations to become effective when approved~~
31 ~~by the Tax Review Board. may adopt regulations needed to~~
32 ~~administer a tax collected by the Secretary or to fulfill another~~
33 ~~duty delegated to the Secretary. A regulation becomes effective~~
34 ~~when it is approved by the Tax Review Board. All regulations and~~
35 ~~amendments thereto shall be published and made available by the~~
36 Secretary of Revenue.

37 The Secretary of Revenue may, from time to time, make and
38 prescribe such administrative rules, not inconsistent with law
39 and the regulations approved by the Tax Review Board, as may be
40 useful for the administration of his department and the discharge
41 of his responsibilities.

42 References to rules and regulations of the Secretary of
43 Revenue in this Chapter and in any subsequent amendments or
44 additions thereto (unless expressly provided to the contrary

1 therein) shall be construed to mean those rules and regulations
2 promulgated under the provisions of this section."

3 Sec. 29. G.S. 105-264 reads as rewritten:

4 "§ 105-264. Construction of Subchapter; population.

5 It shall be the duty of the Secretary of Revenue to construe
6 all sections of this Subchapter ~~(except Article 8B)~~ that are
7 administered by the Secretary and all sections of Article 36 of
8 Subchapter V; provided, such construction shall not be
9 inconsistent with applicable regulations duly promulgated under
10 the provisions of G.S. 105-262; provided further, nothing in this
11 section shall be construed to prohibit the Secretary of Revenue
12 from initiating and proposing regulations, as provided in G.S.
13 105-262, modifying, changing, altering or repealing existing
14 regulations. V. The Secretary's construction of these sections
15 shall be consistent with the applicable regulations. Such
16 decisions by the Secretary of Revenue shall be prima facie
17 correct, and a protection to the officers and taxpayers affected
18 thereby. Where the license tax is graduated in this Subchapter
19 according to the population, the population shall be the number
20 of inhabitants as determined by the last census of the United
21 States government: Provided, that if any city or town in this
22 State has extended its limits since the last census period, and
23 hereafter has taken a census of its population in these increased
24 limits by an official enumeration, either through the aid of the
25 United States government or otherwise, the population thus
26 ascertained shall be that upon which the license tax is to be
27 graduated.

28 Whenever the Secretary of Revenue shall construe any
29 provisions of the revenue laws administered by him and shall
30 issue or publish to taxpayers in writing any regulation or ruling
31 so construing the effect or operation of any such laws, such
32 ruling or regulation shall be a protection to the officers and
33 taxpayers affected thereby and taxpayers shall be entitled to
34 rely upon such regulation or ruling. In the event the Secretary
35 of Revenue shall change, modify, repeal, abrogate, or alter any
36 such regulation or ruling any taxpayer who has relied upon the
37 construction or interpretation contained in the Secretary's
38 previous ruling or regulation shall not be liable for any
39 additional assessment on account of any tax not paid by reason of
40 reliance upon such ruling or regulation and which might have
41 accrued prior to the date of the change, modification, repeal,
42 abrogation, or alteration by the Secretary, and during the
43 effective period of such prior ruling or regulation. Provided,
44 that nothing herein contained shall prevent any such change in

1 construction or interpretation of the provisions of this Chapter
2 by the Secretary of Revenue from being effective from and after
3 the date of its issuance or promulgation, or the assessment of
4 any tax thereunder."

5 Sec. 30. G.S. 105-267.1 is repealed.

6 Sec. 31. This act is effective upon ratification.

Explanation of Proposal 24

Legislative Proposal 24 makes numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the proposed changes.

<u>Section</u>	<u>Explanation</u>
1	Adds definitions to the privilege license tax statutes. The definitions will clarify terms currently in use and allow for consistent use of modern terms in the future.
2	Modernizes and clarifies language. There is no substantive change.
3	Clarifies the scope of the privilege license tax on installment paper dealers. This change was requested by the Department of Revenue.
4	Clarifies the scope of the privilege license tax on loan agencies. This change was requested by the Department of Revenue.
5	Adds a word that was inadvertently omitted when the privilege license tax statutes were revised in 1989. This change was requested by the Department of Revenue.
6	Repeals two provisions that relate to former law under which Subchapter S corporations were not recognized for State tax purposes. Because Subchapter S status is now recognized, these provisions are no longer necessary.
7	Corrects grammatical and stylistic errors. There is no substantive change.
8	Corrects a stylistic error and removes redundant language. There is no substantive change.
9	Removes a reporting requirement that will have been fulfilled in early 1991.
10	Corrects a stylistic error. There is no substantive change.
11	Corrects a typographical error. There is no substantive change.
12	Makes clarifying and stylistic corrections. There is no substantive change.
13	Clarifies that a married couple filing a joint return must be liable for at least \$2.00 of tax in order for each spouse to check off the box on the form indicating whether \$1.00 should go to political parties.

SectionExplanation

- | | |
|-------|--|
| 14 | Recodifies an existing tax credit and repeals obsolete provisions relating to other tax credits that have been repealed. |
| 15 | Corrects an incorrect cross-reference. This change was requested by the Department of Revenue. |
| 16 | Deletes unnecessary language. |
| 17 | Repeals a tax exemption that has been held unconstitutional by the federal courts. Because the exemption cannot be enforced, its repeal is not a substantive change. |
| 18 | Repeals a provision that has expired. |
| 19 | Repeals an obsolete statute. |
| 20-22 | Recodifies statute allowing taxpayers to donate income tax refunds to the Wildlife Fund; combines the corporate income tax provision with the individual income tax provision. Recodifies the statute allowing taxpayers to donate individual income tax refunds to the Candidates' Financing Fund. Clarifies other provisions relating to income tax refunds and makes stylistic corrections. There is no substantive change. |
| 23 | Corrects a cross-reference to a repealed statute. |
| 24 | Corrects incorrect cross-references and a cross-reference to a repealed statute. |
| 25 | Deletes redundant language. |
| 26-29 | Corrects cross-references relating to administration of motor fuel tax, special fuel tax, and motor carrier tax. |
| 30 | Deletes a statute that is inconsistent with other statutes governing refunds, has no apparent purpose, and is not currently being used. |
| 31 | Provides that the bill is effective upon ratification. |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

HOUSE JOINT RESOLUTION PROPOSAL 25 (91-LC-022(12.5))
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Sponsors: Representatives Lilley; Abernethy, Brawley, Hasty.

Referred to:

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO CONTINUE TO STUDY THE REVENUE LAWS OF NORTH
3 CAROLINA.

4 Whereas, the Legislative Research Commission has been
5 authorized by the 1977, 1979, 1981, 1983, 1985, 1987, and 1989
6 General Assemblies to conduct a study of the revenue laws of
7 North Carolina; and

8 Whereas, since 1977 the committee appointed by the
9 Legislative Research Commission to study the revenue laws has
10 recommended many changes in the revenue laws in the committee's
11 attempt to improve these laws; and

12 Whereas, the Revenue Laws Study Committee has proved to
13 be an excellent forum for both taxpayers and tax administrators
14 to present their complaints about existing law and make
15 suggestions to improve the law;

16 Now, therefore, be it resolved by the House of Representatives,
17 the Senate concurring:

18 Section 1. The Legislative Research Commission is
19 authorized to study the revenue laws of North Carolina and the
20 administration of these laws. The Commission may review the
21 State's revenue laws to determine which laws need clarification,
22 technical amendment, repeal, or other change to make the laws
23 concise, intelligible, easy to administer, and equitable. When
24 the recommendations of the Commission, if enacted, would result
25 in an increase or decrease in State tax revenues, the report of

1 the Commission shall include an estimate of the amount of the
2 increase or decrease.

3 Sec. 2. The Commission may call upon the Department of
4 Revenue to cooperate with it in its study of the revenue laws.
5 The Secretary of Revenue shall ensure that the Department's staff
6 cooperates fully with the Commission.

7 Sec. 3. The Commission shall make a final report of its
8 recommendations for improvement of the revenue laws to the 1993
9 General Assembly and may make an interim report to the 1992
10 Session of the 1991 General Assembly.

11 Sec. 4. This resolution is effective upon ratification.

Explanation of Proposal 25

This joint resolution simply authorizes the Legislative Research Commission to continue to study the revenue laws of this State. The resolution gives the study of the revenue laws a broad scope and permits the Commission to make an interim report to the 1992 Session of the 1991 General Assembly and a final report to the 1993 General Assembly on the results of its study of the revenue laws.

APPENDIX A

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) State Ports--study continued (S.J.R. 96 - Barker, H.B. 133 - Hall).
Lease and Renegotiation of Contracts of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company.
- (2) Development of a State Strategy for the Management of Solid Waste (S.J.R. 112 - Speed, S.B. 1214 - Basnight) and Infectious Wastes (H.B. 1045 - Diggs).
- (3) Worker Training Trust Fund (S.B. 271 - Parnell).
- (4) Tourism's Growth and Effect--study continued (S.B. 297 - Block, H.B. 379 - Warren) and Travel/Tourism Reorganization (H.B. 1132 - Perdue).
- (5) Deregulation of Revolving Credit and Authorization of Credit Card Banks (S.B. 377 - Staton) and Linked Deposits (H.B. 1910 - Locks).
- (6) Administrative Procedure Act's Rule-Making Process (S.B. 535 - Johnson) and Office of Administrative Hearings and the Administrative Rules Review Commission (S.J.R. 1003 - Martin of Guilford, H.B. 1459 - Michaux).
- (7) "Willie M." Programs (S.J.R. 887 - Block).
- (8) State Procurement Contracts to Minority Business Enterprises (S.B. 927 - Hunt of Durham) and Small Business Technical Assistance Programs (H.J.R. 1514 - Colton).

- (9) Consumer Protection Issues, including those relating to the Elderly (S.B. 1261 - Barker).
- (10) State Marine Patrol (S.B. 1267 - Barker).
- (11) Sports Fishing Licenses (S.B. 1284 - Barker).
- (12) Revenue Laws--study continued, including the impact of 1989 tax law changes (H.J.R. 3 - Lilley) and Local Revenue Sources Options (S.B. 1298 - Odom).
- (13) Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes--study continued (H.J.R. 173 - Easterling). Necessity for Certificates of Need, and Continuing Care Issues.
- (14) Health Care/Insurance Costs Issues, including but not limited to, Availability, Benefits, Costs, Portability, Long-Term Care Insurance (H.B. 202 - Wiser), Health Insurance Costs (H.B. 961 - Perdue, S.B. 1068 - Johnson, Joe), Health Insurance (H.J.R. 1159 - Duncan), Infertility Treatment Coverage (H.B. 1187 - Payne), Mammogram/Pap Smear Coverage (H.B. 1014 - Barnes), and Health Care Insurance Coverage (H.B. 1242 - Mills).
- (15) Development of a State Strategy for the Protection of All Groundwater Resources (H.J.R. 554 - DeVane, S.J.R. 367 - Winner).
- (16) Surface Water Quality and Resources Issues, Including Interbasin Transfer, Albemarle-Pamlico Estuarine (H.J.R. 33 - Ethridge, B.), Coastal Water Quality -- study continued (H.J.R. 37 - Ethridge, B.), Haw in Scenic River System (H.B. 1224 - Hackney), Pesticides (H.J.R. 1399 - Holt), Water Resources Planning (H.B. 1945 - Payne), Toxaway River (H.B. 1955 - Colton), and Yadkin River Use and Protection (S.B. 1182 - Kaplan).
- (17) Insanity Verdict (H.B. 1364 - Rhodes), and Guilty but Insane Verdict (H.B. 1372 - Sizemore).
- (18) Agriculture Study (H.B. 1362 - Brown), Agribusiness Plant Variances (H.B. 1304 - Bowman), Fallow Deer (H.J.R. 1924 - James).
- (19) Homeless Persons (H.B. 2018 - Greenwood, S.B. 1290 - Martin of Guilford).
- (20) State Information Processing Needs and Cost -- study continued (S.B. 47 - Royall).
- (21) Sports Fishing Licenses (S.B. 1284 - Barker).
- (22) Proprietary Schools (S.B. 854 - Martin, W.).
- (23) Public Employees' Day Care and Medical and Dental Benefits.

Sec. 2.2. Legislative Activity Between Legislative Sessions and Procedures to Shorten the Legislative Session. The Legislative Research Commission may study the procedures of this State's, other states' and other legislative bodies' practices and procedures regulating legislative and study activity and may make recommendations as to changes in law, procedures and rules that will lead to greater efficiency in the legislative process while safeguarding the rights of all members of the General Assembly and of the citizens in this State's legislative process.

Sec. 2.3. State Capital Assets and Improvements (S.B. 1240 - Sherron). The Legislative Research Commission may study the:

- (1) Inventory of State capital assets and the use of those assets,
- (2) Issue of preventive maintenance for State buildings, and
- (3) Need and feasibility of:
 - a. Establishing in the State budget a reserve for repairs and renovations and the administration of such a reserve, and

b. Charging rent to State agencies using State buildings

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE JOINT RESOLUTION 3

Sponsors: Representatives Lilley; Bowman.

Referred to: Appointments and the Calendar.

January 12, 1989

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO CONTINUE TO STUDY THE REVENUE LAWS OF
3 NORTH CAROLINA.

4 Whereas, the Legislative Research Commission has been authorized by
5 the 1977, 1979, 1981, 1983, 1985, and 1987 General Assemblies to conduct a study of
6 the revenue laws of North Carolina; and

7 Whereas, since 1977 the committee appointed by the Legislative Research
8 Commission to study the revenue laws has recommended many changes in the
9 revenue laws in the committee's attempt to improve these laws; and

10 Whereas, the Revenue Laws Study Committee has proved to be an
11 excellent forum for both taxpayers and tax administrators to present their complaints
12 with existing law and make suggestions to improve the law;
13 Now, therefore, be it resolved by the House of Representatives, the Senate
14 concurring:

15 Section 1. The Legislative Research Commission is authorized to study
16 the revenue laws of North Carolina and the administration of these laws. The
17 Commission may review the State's revenue laws to determine which laws need
18 clarification, technical amendment, repeal, or other change to make the laws concise,
19 intelligible, easy to administer, and equitable. When the recommendations of the
20 Commission, if enacted, would result in an increase or decrease in State tax revenues,

1 the report of the Commission shall include an estimate of the amount of the increase
2 or decrease.

3 Sec. 2. The Commission may call upon the Department of Revenue to
4 cooperate with it in its study of the revenue laws. The Secretary of Revenue shall
5 ensure that the Department's staff cooperates fully with the Commission.

6 Sec. 3. The Commission shall make a final report of its recommendations
7 for improvement of the revenue laws to the 1991 General Assembly.

8 Sec. 4. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1989

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SENATE BILL 1298
Second Edition Engrossed 7/12/89

Short Title: Local Govt. Study/Reimbursement.

(Public)

Sponsors: Senators Odom, Basnight, Carpenter, Hardin, Hunt of Durham, Hunt of Moore, Johnson of Cabarrus, Johnson of Wake, Martin of Guilford, Parnell, Richardson, Sands, Speed, and Staton.

Referred to: Finance.

May 11, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE LOCAL GOVERNMENT REVENUE STUDY
3 COMMISSION, TO SIMPLIFY TAX ADMINISTRATION, AND TO
4 ALLOCATE A PERCENTAGE OF STATE INCOME TAX PROCEEDS TO
5 LOCAL GOVERNMENTS TO REPLACE STATE REIMBURSEMENTS FOR
6 PREVIOUSLY REPEALED LOCAL TAXES.

7 Whereas, the elimination of the federal revenue-sharing program and
8 recent federal legislation increasing the local government cost of the Medicaid
9 program have created needs for additional local government revenue; and

10 Whereas, recent State legislation has eliminated portions of the property
11 tax base; and

12 Whereas, local government units in North Carolina must seek State
13 approval for new sources of revenue to meet pressing needs; and

14 Whereas, the General Assembly finds that local governments may need
15 additional alternative local revenue sources; Now, therefore,
16 The General Assembly of North Carolina enacts:

17 PART I.

LOCAL GOVERNMENT REVENUE STUDY COMMISSION.

Section 1. The Local Government Revenue Study Commission is created. The Commission shall study the need for additional local government revenue sources to supplement the property tax, local sales and use taxes, and other existing revenue sources. The Commission shall review recent changes in federal and State law that have reduced financial assistance to local governments, created needs for increased expenditures, and restricted the property tax base. The Commission shall develop proposed options for local revenue sources, including an additional one-half cent (1/2¢) local sales and use tax, a local-option county income tax on county residents and/or people who work in the county, and a local-option county payroll tax. In developing the proposals, the Commission shall consider the fiscal impact of each proposal, how to simplify the administration of each proposal, how to reduce the burden on businesses, individuals, and the Department of Revenue in complying with each proposal, and other practical and legal issues associated with the proposals.

Sec. 2. The Commission shall consist of 14 members to be appointed as follows:

- (1) Four members of the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be designated cochair;
- (2) Three public members appointed by the President Pro Tempore of the Senate, two of whom shall be local government officials and one of whom shall be a citizen representing the public at large;
- (3) Four members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom shall be designated cochair;
- (4) Three public members appointed by the Speaker of the House of Representatives, two of whom shall be local government officials and one of whom shall be a citizen representing the public at large.

Sec. 3. Members appointed to the Commission shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled in the same manner as the original appointments were made.

Sec. 4. Upon request of the Commission or its staff, all State departments and agencies and all local government agencies shall furnish to the Commission or its staff any information in their possession or available to them.

1 Sec. 5. The Commission shall submit a final report of its findings and
2 recommendations to the General Assembly on or before the first day of the 1991
3 Session of the General Assembly by filing the report with the Speaker of the House
4 of Representatives and President Pro Tempore of the Senate. The Commission shall
5 terminate upon filing its final report.

6 Sec. 6. The Commission shall have its initial meeting on or before
7 October 15, 1989. The Commission shall meet upon the call of the cochairs.

8 Sec. 7. Upon approval of the Legislative Services Commission, the
9 Legislative Services Officer shall assign professional and clerical staff to assist in the
10 work of the Commission. Clerical staff shall be furnished to the Commission through
11 the offices of House and Senate supervisors of clerks. The expenses of employment
12 of the clerical staff shall be borne by the Commission. The Commission may meet in
13 the Legislative Building or the Legislative Office Building upon the approval of the
14 Legislative Services Commission.

15 Sec. 8. Members of the Commission shall be paid per diem, subsistence,
16 and travel allowances as follows:

- 17 (1) Commission members who are also members of the General
18 Assembly, at the rate established in G.S. 120-3.1;
- 19 (2) Commission members who are officials or employees of the State
20 or local government agencies, at the rate established in G.S. 138-6;
- 21 (3) All other Commission members at the rate established in G.S.
22 138-5.

23 Sec. 9. There is appropriated from the General Fund to the General
24 Assembly the sum of \$15,000 for the 1989-90 fiscal year, and the sum of \$10,000 for
25 the 1990-91 fiscal year to fund the Commission created by this act. Funds
26 appropriated for the Commission for the 1989-90 fiscal year but not expended during
27 that fiscal year may be expended for the Commission during the 1990-91 fiscal year.

28 Sec. 10. This act shall become effective July 1, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 970
SENATE BILL 1365

AN ACT TO REPEAL THE INHERITANCE TAX EXEMPTION FOR FEDERAL RETIREMENT BENEFITS, THEREBY MAKING THE TAX TREATMENT FOR FEDERAL RETIREMENT BENEFITS THE SAME AS FOR STATE RETIREMENT BENEFITS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE INHERITANCE TAX EXEMPTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-3(8) is repealed.

Sec. 2. The Legislative Research Commission may study the exemptions from the State's inheritance tax to determine if the changes made to the inheritance tax law since 1985 affect the rationale for the exemptions. The Legislative Research Commission may assign this study to the Revenue Laws Study Committee or a separate committee. The Commission shall report its findings on this issue to the 1991 General Assembly.

Sec. 3. Section 1 of this act shall become effective September 1, 1990, and shall apply to the estates of decedents dying on or after that date. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 1078
HOUSE BILL 296

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO ALLOCATE FUNDS THEREFOR.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1990."

An outline of the provisions of the act follows this section. The outline shows the heading "-----CONTENTS/INDEX-----" and lists by general category the descriptive captions for the various sections and groups of sections that compile the act.

-----CONTENTS/INDEX-----

This outline is designed for reference only, and the outline and the corresponding entries throughout the act in no way limit, define, or prescribe the scope or application of the text of the act. The listing of the original bill or resolution in the outline of this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the provisions contained in the original bill or resolution.

PART II.-----LEGISLATIVE RESEARCH COMMISSION

- Sec. 2.1
- Sec. 2.2
- Sec. 2.3
- Sec. 2.4
- Sec. 2.5
- Sec. 2.6
- Sec. 2.7
- Sec. 2.8
- Sec. 2.9
- Sec. 2.10
- Sec. 2.11

PART III.-----ENERGY ASSURANCE STUDY COMMISSION (S.B. 1558 - Rauch)

- Sec. 3.1
- Sec. 3.2
- Sec. 3.3

PART IV.-----COSMETIC ARTS REGULATION

- Sec. 4.1

Sec. 4.2

PART V.-----BIRTH-RELATED NEUROLOGICAL IMPAIRMENT STUDY
COMMISSION (H.B. 2296 - Miller)

- Sec. 5.1
- Sec. 5.2
- Sec. 5.3
- Sec. 5.4
- Sec. 5.5

PART VI.-----OPEN GOVERNMENT THROUGH PUBLIC
TELECOMMUNICATIONS STUDY COMMISSION

- Sec. 6.1
- Sec. 6.2
- Sec. 6.3
- Sec. 6.4
- Sec. 6.5
- Sec. 6.6
- Sec. 6.7

PART VII.-----SCHOOL IMPROVEMENT ACT STUDY (H.J.R. 2367 - Nesbitt)

- Sec. 7.1
- Sec. 7.2

PART VIII.-----STATE LAW ENFORCEMENT STUDY

- Sec. 8.1
- Sec. 8.2

PART IX.-----EFFECTIVE DATE

- Sec. 9.1

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 or 1990 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- (1) Small System and Individual Water and Wastewater Needs (H.B. 2373 - Hardaway).
- (2) Health Insurance Pool (H.B. 985 - Hunt, Judy).
- (3) Veterans' Home (H.B. 2139 - Hurley).
- (4) Public Attorneys Education Assistance (S.B. 1269), and
- (5) Infrastructure Bonds (S.B. 1582 - Carpenter).

Sec. 2.2. Bed and Breakfast Inn Regulation Study. The Legislative Research Commission may study the issue of regulating bed and breakfast inns in the 5 to 20 room classification, including the following:

- (1) the legal definition of a bed and breakfast inn for the purposes of statewide uniform administration of the Public Health Law of North Carolina;
- (2) the need for exemptions from the following regulations:

- (a) commercial grade, stainless steel NSF-approved kitchen equipment;
- (b) separate family kitchens;
- (c) public restrooms for the dining room;
- (d) private baths with each guest room;
- (e) employees' restrooms;
- (f) extra handwashing basins;
- (g) three-basin sinks;
- (h) sprinkler systems;

(3) tax issues relating to the operation of bed and breakfast inns.

Sec. 2.3. Prescription Drug Assistance (H.B. 2149 - Green). The Legislative Research Commission may study the issue of creating a prescription drug assistance program, including the following:

- (1) Medication needs of low-income persons;
- (2) State/local/private cooperative efforts to provide prescription drugs at reduced cost or no cost to low-income persons;
- (3) Eligibility for the program; and
- (4) Financing and costs of the program.

Sec. 2.4. Public Transportation Financing Study - continued (H.B. 2301 - Blue). Section 7 of Chapter 740 of the 1989 Session Laws reads as rewritten:

"Sec. 7. The Legislative Research Commission shall make a comprehensive study of financing of public transportation in North Carolina, and contracting with the private sector for public transportation services, and report its interim recommendations to the 1989 Regular Session, (1990 Regular Session) and its final recommendations to the 1991 Regular Session of the General Assembly."

Sec. 2.5. Mail Order Sales Taxes Study (H.B. 2334 - Pope). The Legislative Research Commission may authorize its Revenue Laws Study Committee, created pursuant to Section 2.1 of Chapter 802 of the 1989 Session Laws, or such other committee as it deems appropriate, to study the issue of the constitutionality of mail order sales taxes.

Sec. 2.6. Budget Restructuring and Legislative Session Study (S.B. 1388 - Goldston; H.B. 2293 - Pope). The Legislative Research Commission may study the following:

- (1) Whether in preparing and enacting the budget for a fiscal year, the Governor and General Assembly shall use as the State funds revenue estimate for the General, Highway, and Wildlife Funds no more than the total State funds received for the calendar year ending December 31 immediately prior to the fiscal year.
- (2) Whether if the budget estimates any reversions at the end of the fiscal year covered by the budget, those reversions may be proposed only for capital projects, or other projects with a fiscal impact only in that fiscal year.
- (3) Whether the State should go to an annual rather than a biennial budget and limit future session lengths by statute.
- (4) If the Committee makes favorable recommendations concerning the above provisions, any necessary technical provisions, as well as a proposed transition period to enable a smoother change in budget process.

Sec. 2.7. Hazardous Waste Management Study. The Legislative Research Commission may study the broad problem of hazardous waste management and the reduction of waste to the end that the safest, most cost-effective, most efficient, and most scientifically sound methods of reduction, recycling, recovery and management of waste will become more readily apparent to the ordinary citizen and taxpayer.

The direction of the study shall not be inconsistent with the State of North Carolina's existing interstate agreements concerning hazardous waste management.

Sec. 2.8. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.9. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1991 General Assembly.

Sec. 2.10. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.11. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III.----ENERGY ASSURANCE STUDY COMMISSION (S.B. 1558 - Rauch)

Sec. 3.1. Notwithstanding the provisions of Section 6.7 of Chapter 802 of the 1989 Session Laws, there is allocated from funds appropriated to the General Assembly the sum of \$10,000 for the 1990-91 fiscal year to fund the North Carolina Energy Assurance Study Commission created in Part VI of Chapter 802 of the 1989 Session Laws.

Sec. 3.2. Notwithstanding the provisions of Section 6.7 of Chapter 802 of the 1989 Session Laws, funds allocated to the North Carolina Energy Assurance Study Commission for the 1989-90 fiscal year that have not been expended at the end of that fiscal year shall not revert but shall remain available to the Study Commission for its expenses during the 1990-91 fiscal year.

Sec. 3.3. Section 6.4 of Chapter 802 of the 1989 Session Laws reads as rewritten:

"Sec. 6.4. The Commission may file an interim report on or before June 1, 1990, and shall file its final report ~~by February 1, 1991, prior to adjournment of the 1991 Session of the 1991 General Assembly,~~ with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The report shall summarize the information obtained in the course of the Commission's inquiry, set forth its findings and conclusions, and recommend administrative actions or legislative actions that may be necessary to implement the Energy Assurance Plan. If legislation is recommended, the Commission shall prepare and submit with its report appropriate bills. Upon termination of the Commission, the cochairs shall transmit to the Legislative Library for preservation the records and papers of the Commission. The Commission shall terminate upon the filing of its report."

PART IV.----COSMETIC ARTS REGULATION

Sec. 4.1. In addition to the study authorized pursuant to Part XXIII of Chapter 802 of the 1989 Session Laws, the Legislative Committee on New Licensing Boards may meet during the interim to study the following issues related to the State Board of Cosmetic Art Examiners and the regulation of the practice of cosmetic art and manicuring:

- (1) The requirements for graduation with respect to eligibility to take the examination for licensure as a cosmetologist or apprentice cosmetologist;

- (2) Continuing education requirements for cosmetologists;
- (3) Board rules governing cosmetology school size, curricula, lab equipment, and related regulations affecting such schools; and
- (4) Feasibility of teaching cosmetic arts and or manicuring in high schools.

Sec. 4.2. The Legislative Committee on New Licensing Boards shall file its report with the General Assembly by submitting copies on or prior to the date of convening of the 1991 General Assembly with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

PART V.-----BIRTH-RELATED NEUROLOGICAL IMPAIRMENT STUDY COMMISSION (H.B. 2296 - Miller)

Sec. 5.1. The Birth-Related Neurological Impairment Study Commission, created by Section 6.1 of Chapter 1100 of the 1987 Session Laws and continued by Chapter 64 of the 1989 Session Laws, is revived and shall continue in existence until the **sine die** adjournment of the 1991 Regular Session. The Commission shall report its findings and recommendations to the 1991 General Assembly.

Sec. 5.2. The continued Birth-Related Neurological Impairment Study Commission shall have the powers and duties of the original Commission as they are necessary to continue the original study, and to plan further activity on the subject of assisting all birth-related neurologically impaired victims.

Sec. 5.3. Members and staff of the continued Birth-Related Neurological Impairment Study Commission shall receive compensation and expenses as under the original authorization in Chapter 1100 of the 1987 Session Laws.

Sec. 5.4. The members of the Birth-Related Neurological Impairment Study Commission shall be those members originally appointed to the Commission pursuant to Part VI of Chapter 1100 of the 1987 Session Laws (1988 Regular Session) and the following two new members: (i) one member of the North Carolina State Bar specializing in the representation of birth-related neurologically impaired victims, appointed by the Speaker of the House of Representatives and (ii) a director or operator of a long-term residential care facility for birth-related neurologically impaired victims, appointed by the President of the Senate.

Sec. 5.5. Of the funds appropriated to the General Assembly there is allocated the sum of \$25,000 for the 1990-91 fiscal year to fund the work of the Birth-Related Neurological Impairment Study Commission.

PART VI.-----STUDY COMMISSION ON OPEN GOVERNMENT THROUGH PUBLIC TELECOMMUNICATIONS

Sec. 6.1. There is created the Study Commission on Open Government Through Public Telecommunications, to be composed of 13 members, with three Senators appointed by the President Pro Tempore of the Senate; three Representatives, one of whom is the Legislative Liaison to the Open Public Events Network Committee, to be appointed by the Speaker of the House; the current and two previous chairmen of the Public Telecommunications Board of Commissioners; the chairman of the Open Public Events Network (ex officio member of the Board of Commissioners by statute); the Secretary of the Department of Administration (designated by statute as ex officio member and secretary of the Board of Commissioners); the chairman of the Planning Committee of the Board of Commissioners; and a representative of the North Carolina cable television industry. Appointments will be made within 30 days subsequent to the **sine die** adjournment of

the 1989 Regular Session. The chairman of the Study Commission shall be the Legislative Liaison to the Open Public Events Network Committee.

Sec. 6.2. The Study Commission shall study the advisability, feasibility and costs of expanding the Open Public Events Network to include gavel-to-gavel coverage of the North Carolina General Assembly, and as a part of the study, the Study Commission shall consider (i) leasing bulk satellite transponder time and (ii) selling off excess (unused) time, with some income from sale dedicated to support operating costs of the expanded Open Public Events Network.

Sec. 6.3. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Study Commission. The Department of Administration, through the Agency for Public Telecommunications, will provide substantial staffing of the Study Commission, with the assistance of the staffs of other State agencies as needed.

Sec. 6.4. The Study Commission will file a written report, including recommended legislation, with the presiding officers of the House of Representatives and the Senate, by March 1, 1991. The Study Commission will be considered dissolved upon *sine die* adjournment of the 1991 Regular Session.

Sec. 6.5. Members of the Study Commission shall be paid compensation and per diem and travel expenses in accordance with G.S. 138-5. Members who are legislators shall be reimbursed for travel and subsistence in accordance with G.S. 120-3.1. Witnesses from outside Raleigh invited to testify will be reimbursed for travel expenses at State rates.

Sec. 6.6. The Study Commission will bear the costs of teleconferences arranged to receive testimony advancing the work of the Study Commission.

Sec. 6.7. There is allocated from the funds appropriated to the General Assembly the sum of \$15,000 for the 1990-91 fiscal year to the Study Commission on Open Government Through Public Telecommunications for its work, provided, however, that the Legislative Services Commission may allocate additional funds necessary to enable the Commission to complete its study.

PART VII.-----SCHOOL IMPROVEMENT ACT STUDY (H.J.R. 2367 - Nesbitt)

Sec. 7.1. In addition to the issues authorized for study pursuant to Section 5.4 of Chapter 802 of the 1989 Session Laws, the Education Study Commission may study methods of increasing involvement of parents and teachers in developing local school improvement plans under the Performance-based Accountability Program and of increasing the involvement of teachers in approving such plans.

Sec. 7.2. The study may include the provisions of Section 1 of House Bill 2367, as introduced on June 6, 1990, which provided (a) for the involvement of over fifty percent (50%) of the teachers in a local school administrative unit in developing the unit's local school improvement plan, for (b) a vote by teachers in each individual school for approving the strategies for that school for attaining the local student performance goals, and (c) for a vote by teachers and administrators before submission of a local school improvement plan to the State Superintendent for approval. The study may also include consideration of methods of involvement of substantial numbers of parents in developing the unit's local school improvement plan.

PART VIII.-----STATE LAW ENFORCEMENT STUDY

Sec. 8.1. Section 107 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 107. The Joint Legislative Commission on Governmental Operations shall conduct a study of State law enforcement agencies and of other State agencies having law enforcement responsibility. This study shall include:

- (1) Consideration of a method to coordinate the activities of these agencies as appropriate and to reduce duplication and overlapping of law enforcement responsibilities, training, and technical assistance among State law enforcement agencies and among other State agencies having law enforcement responsibility;
- (2) Examination of the salary grade of all State law enforcement agencies' officers and a determination of whether present salary grades are appropriate; and
- (3) Determination of whether G.S. 114-13 should be changed to make sworn law enforcement agents of the State Bureau of Investigation exempt from G.S. 126-7 but subject to the same salary classifications, ranges, and longevity pay for services as are applicable to other State employees generally, and whether to increase the agents' salary in an amount corresponding to the increments between steps within the salary range established for the class to which the member's position is assigned by the State Personnel Commission, not to exceed the maximum of each applicable salary range.

The Commission may hire outside consultants, if necessary, to assist in its study. The Commission may make an interim report to the 1989 General Assembly, Regular Session 1990, and ~~may shall~~ make a final report to the House and Senate Appropriations Committees on Justice and Public Safety and to the 1991 General Assembly."

Sec. 8.2. There is allocated from funds appropriated to the General Assembly the sum of \$100,000 for the 1990-91 fiscal year to the Joint Legislative Commission on Governmental Operations for the completion of the work authorized by this Part.

PART IX.-----EFFECTIVE DATE

Sec. 9.1. Section 3.2 of this act is effective June 30, 1990. The remainder of this act is effective July 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

APPENDIX B

REVENUE LAWS STUDY COMMITTEE

1989 - 1990

Rep. Daniel T. Lilley, Cochair
P. O. Box 824
Kinston, North Carolina

Sen. Dennis J. Winner, Cochair
81B Central Avenue
Asheville, North Carolina

Rep. J. Vernon Abernethy
P. O. Box 38
Gastonia, North Carolina

Sen. A. D. Guy
P. O. Box 340
Jacksonville, North Carolina

Rep. C. Robert Brawley
P. O. Box 1322
Mooreville, North Carolina

Sen. Donald R. Kincaid
101 Mulberry St., N.W.
Lenoir, North Carolina

Rep. James M. Craven
P. O. Box 44
Pine Bluff, North Carolina

Sen. Marshall A. Rauch
6048 S. York Road
Gastonia, North Carolina

Rep. John C. Hasty
P. O. Box 945
Maxton, North Carolina

Sen. William W. Staton
P. O. Box 1320
Sanford, North Carolina

Rep. Betty H. Wiser
P. O. Box 33361
Raleigh, North Carolina

Mrs. Margaret Tennille
P. O. Box 5988
Winston-Salem, North Carolina

Mr. Earle H. Ward
P. O. Box 670
Shelby, North Carolina

The Honorable Oscar Harris
P. O. Box 578
Dunn, North Carolina

LRC Member responsible for study: Rep. John W. Hurley

Staff: Martha H. Harris, Bill Drafting Division

Sabra J. Faires, Fiscal Research Division

David Crofts, Fiscal Research Division

Warren Plonk, Fiscal Research Division

Ruth Sappie, Fiscal Research Division

Cindy Avrette, Legislative Research Division

Ada B. Edwards, Committee Clerk

Shirley F. Phillips, Committee Clerk

APPENDIX C

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

WILLIAM R. HALL, JR.
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LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE (919) 733-6834



TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE (919) 733-2578

MARGARET WEBB
LEGISLATIVE INFORMATION OFFICER
TELEPHONE (919) 733-4200

August 24, 1990

MEMORANDUM

TO: Revenue Laws Study Committee

FROM: Martha H. Harris

RE: Bills Recommended to the 1990 Session by the Revenue Laws Study Committee

The following is a summary of the disposition of bills that were recommended by the Revenue Laws Study Committee to the 1990 Session of the 1989 General Assembly.

Legislative Proposal 1: Failed.

SB 1360 and HB 2069, A BILL TO BE ENTITLED AN ACT TO REINSTATE SALES TAX ON CERTAIN VEHICLES AND VEHICLE PARTS, TO MODIFY THE HIGHWAY USE TAX AND THE ALTERNATE GROSS RECEIPTS TAX, AND TO MAKE TECHNICAL CHANGES IN THE LAWS AFFECTED BY THE HIGHWAY TRUST FUND, were introduced by Senator Winner and Representative Lilley, respectively. This proposal was postponed indefinitely in the House and was re-referred to Appropriations in the Senate.

Legislative Proposal 2: Enacted in modified form.

SB 1364 and HB 2067, A BILL TO BE ENTITLED AN ACT TO AMEND THE TAX FAIRNESS ACT OF 1989 TO PROVIDE TRANSITIONAL ADJUSTMENTS RELATING TO SUBCHAPTER S CORPORATIONS AND DEPRECIATION DEDUCTIONS, TO CORRECT AN ERROR THAT INADVERTENTLY DISALLOWED DEDUCTIONS FOR SOME MORTGAGE INTEREST PAYMENTS, AND TO PROVIDE ADDITIONAL TAX RELIEF FOR TAXPAYERS WITH DEPENDENTS WHO ARE PERMANENTLY AND TOTALLY DISABLED, were introduced by Senator Winner and Representative Lilley, respectively. Neither of these bills was enacted but House Bill 2138, which contained most of

the recommendations of Proposal 2, was ratified as Chapter 984 of the 1989 Session Laws.

Legislative Proposal 3: Enacted in modified form.

SB 1359 and HB 2067, A BILL TO BE ENTITLED AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS AND TO ADOPT THE FEDERAL STANDARD DEDUCTION AND PERSONAL EXEMPTION AMOUNTS FOR 1990, were introduced by Senator Winner and Representative Lilley, respectively. House Bill 2067 was amended to delete the provisions adopting the 1990 federal standard deduction and personal exemption amounts and revising the tax thresholds. Ratified as Chapter 981, the act updates the reference to the Internal Revenue Code.

Legislative Proposal 4: Enacted.

SB 1363 and HB 2071, A BILL TO BE ENTITLED AN ACT TO MODIFY THE TIME ALLOWED FOR FILING CERTAIN PROPERTY TAX APPEALS AND TO MAKE TECHNICAL CORRECTIONS TO THE PROPERTY TAX STATUTES, were introduced by Senator Winner and Representative Lilley, respectively. The Senate Bill was amended to add two provisions relating to penalties for submitting a bad check in payment of taxes and was ratified as Chapter 1005 of the 1989 Session Laws.

Legislative Proposal 5: Enacted in modified form.

SB 1365 and HB 2068, A BILL TO BE ENTITLED AN ACT TO PROVIDE AN INHERITANCE TAX EXEMPTION FOR STATE AND LOCAL GOVERNMENT RETIREMENT BENEFITS PAID TO LINEAL DESCENDANTS AND ANCESTORS AND TO LIMIT THE CURRENT INHERITANCE TAX EXEMPTION FOR FEDERAL GOVERNMENT RETIREMENT BENEFITS TO ONLY THOSE BENEFITS PAID TO LINEAL DESCENDANTS AND ANCESTORS, were introduced by Senator Winner and Representative Lilley, respectively. The Senate Bill was rewritten and ratified as Chapter 970 of the 1989 Session Laws. As rewritten, the bill repeals the inheritance tax exemption for federal government retirement benefits and authorizes the Legislative Research Commission to study existing inheritance tax exemptions.

Legislative Proposal 6: Enacted.

SB 1367 and HB 2074, A BILL TO BE ENTITLED AN ACT TO INCREASE THE MAXIMUM BOND THAT MAY BE REQUIRED OF FUEL DISTRIBUTORS AND SUPPLIERS, were introduced by Senator Winner and Representative Lilley, respectively. The House Bill was amended to provide a minimum bond of \$2,000 and was ratified as Chapter 908 of the 1989 Session Laws.

Legislative Proposal 7: Enacted.

SB 1366 and HB 2073, A BILL TO BE ENTITLED AN ACT TO ALLOW A SALES TAX EXEMPTION FOR FUEL USED BY A SMALL POWER PRODUCER TO GENERATE ELECTRICITY, were introduced by Senator Winner and Representative Lilley, respectively. The House Bill was amended to change the effective date from July 1, 1990, to July 1, 1991, and was ratified as Chapter 989 of the 1989 Session Laws.

Legislative Proposal 8: Enacted in modified form.

SB 1362 and HB 2072, A BILL TO BE ENTITLED AN ACT TO REVISE THE TAXATION OF A NORTH CAROLINA ENTERPRISE CORPORATION AND TO EXTEND THE TAX CREDIT FOR INVESTMENT IN AN ENTERPRISE CORPORATION, were introduced by Senator Winner and Representative Lilley, respectively. The Senate Bill was amended to provide that investments in a partnership in which the N.C. Enterprise Corporation is the general partner will be treated as investments in the Corporation for purposes of the tax credit and to delete the provisions revising the taxation of N.C. Enterprise Corporations. The amended bill was ratified as Chapter 848 of the 1989 Session Laws.

Legislative Proposal 9: Enacted.

SB 1361 and HB 2070, A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS, were introduced by Senator Winner and Representative Lilley, respectively. The Senate Bill was ratified as Chapter 814 of the 1989 Session Laws.

APPENDIX D

SPEAKERS AT COMMITTEE MEETINGS

<u>SPEAKER</u>	<u>SUBJECT OF PRESENTATION</u>
Odell Payne, Guilford Co.	Increasing the Inventory Tax Reimbursement
Chuck Forrester Guilford Co. Manager	Increasing the Inventory Tax Reimbursement
John Witherspoon, Chair Guilford Co. Commissioners	Increasing the Inventory Tax Reimbursement
Betsy Y. Justus Secretary of Revenue	Administration of New Income Tax Law
Robert E. Smith Executive Vice-Pres. N. C. Tire Dealers Assoc.	Scrap Tire Disposal Act
Bill Rustin N. C. Retail Merchants Association	Merchant's Discount Proposal; Business License Tax
Rep. Art Pope	Mail Order Sales Tax; Budget Restructuring
Ellis Hankins N. C. League of Municipalities	Mail Order Sales Tax; Business License Tax
Ed Regan N. C. County Commissioners	Mail Order Sales Tax; Business License Tax
Jim Collins Blackwell's Tax Service Fort Mill, S. C.	Nonresident Joint Tax Returns
Butch Gunnells N. C. Bottlers Assoc.	Soft Drink Tax
George Boylan Attorney General	Status of <u>Swanson</u> and <u>Bailey</u> Lawsuits
William Flournoy EHNH	Conservation Tax Credit Program
Susan Valauri NFIB	Business License Tax

Elton Edwards
City of Greensboro

Business License Tax

Don Ward
N. C. Petroleum Council

Fuel Taxes

Sen. William Goldston

Budget Restructuring

Harlan Boyles, State Treas.

Budget Restructuring

Marvin Dorman, Budget Office

Budget Restructuring

Fred Talton, State Controller

Budget Restructuring

APPENDIX E



North Carolina Department of Revenue

November 15, 1990

James G. Martin, Governor

Betsy Y. Justus, Secretary

MEMORANDUM

RE: Omnibus Budget Reconciliation Act of 1990

Code Changes Affecting Corporate Income Tax Law

1. Impose corporate tax on divisive transactions in connection with certain changes of ownership--generally this amendment requires recognition of corporate-level gain when a subsidiary stock distribution qualifying under section 355 is made and certain ownership percentage and time limitation are met. A distributing corporation will recognize gain as if it had sold the stock or securities at fair market value. Eff. 10-9-90
Revenue effect for N.C. - positive. (negligible)
2. Modify treatment of preferred stock issued with a redemption premium - amendment applies economic accrual rule and de minimis rule applicable to debt instruments issued with OID to preferred stock that is subject to mandatory redemption. Effective for stock issued on or after 10-10-90.
Revenue effect for N.C. - positive. (negligible)
3. Expand and clarify information reporting and allocation rules for certain acquisitions.
Revenue effect for N.C. - positive. (negligible)
4. Expand the definition of a corporate equity reduction transaction for purposes of limiting certain NOL carrybacks.
Revenue effect for N.C. - none (loss deduction determined by State statute.)
5. Clarify treatment of debt exchanges - pertains to cancellation of debt transactions and the amount realized by exchanges of debt for debt and some reorganizations. Effective for exchanges occurring on or after 10-10-90.
Revenue effect for N.C. - positive. (negligible)
6. Modify rules relating to interest paid by corporations to the IRS on tax obligations - increases by two(2) percentage points the interest charged on corporate income tax underpayments by C corporations if the underpayment is \$100,000 or more.
Revenue effect for N.C. - none.

7. Amend percentage depletion provisions allowing a deduction up to 100% of net income from certain oil and gas properties.

Revenue effect for N.C. - negative (negligible)

8. Expenditures incurred to make businesses accessible to disabled individuals was amended to reduce the deductible amount for any taxable year to \$15,000 from \$35,000 for qualifying small businesses.

Revenue effect for N.C. - positive

Federal Changes Affecting Operating Income

The direct overall impact for the state as result of the above federal changes will be positive, but the indirect impact caused by the excise taxes increase will potentially affect business profits negatively. Some of those taxes are as follows:

1. Increase in motor fuels tax rate by 5¢ per gallon on December 1, 1990.
2. Double gas guzzler tax ranging from \$1000 to \$7700.
3. Increases tobacco taxes by 25%.
4. Increases beer, wine and distilled spirits taxes.
5. Imposes a 10% luxury excise tax on auto, boats/yachts, aircraft, furs and jewelry with the tax applied on amounts above certain thresholds.
6. Expand ozone-depleting chemicals tax.
7. Extend leaking underground storage tank trust fund tax.
8. Increase from 8% to 10% tax for Airport Trust Fund.
9. Increase harbor maintenance tax.
10. Extend telephone tax.
11. Increase ceiling on wages subject to Medicare insurance tax (part of FICA) to \$125,000.



North Carolina Department of Revenue

James G. Martin, Governor

Betsy Y. Justus, Secretary

November 21, 1990

MEMORANDUM

TO: Revenue Officers, Field Auditors, and Income Tax Personnel

FROM: Michael S. Hodges, Director
Individual Income Tax Division

SUBJECT: Revenue Reconciliation Act of 1990 -
Impact on Individual Income Tax if References to the Internal
Revenue Code are updated to January 1, 1991

We have begun receiving inquiries about the Revenue Reconciliation Act of 1990, signed by the President on November 5, 1990, and its effect upon North Carolina's income tax. The Act makes a number of significant changes affecting individuals, including a top federal income tax bracket of 31 percent on taxable incomes exceeding certain threshold amounts, limits the tax on net capital gains to no more than 28 percent, increases the alternative minimum tax to 24 percent, imposes limits on itemized nonbusiness deductions, and phases out the personal exemption for taxpayers with adjusted gross incomes exceeding threshold amounts. At the present time, none of the changes included in the Act will be applicable for North Carolina income tax purposes because our current statutory references are to the Internal Revenue Code in effect as of January 1, 1990. Each year, as you know, we ask the General Assembly to update our references to the Internal Revenue Code so that we track current federal law. We have submitted a request to the Revenue Laws Study Committee to update the references to the Code as of January 1, 1991, and, if the legislation is enacted, the following changes included in the Revenue Reconciliation Act of 1990 will be adopted for North Carolina income tax purposes:

Personal Exemptions

Under federal law prior to the 1990 Act, an individual's federal income tax liability was increased by a five percent tax rate adjustment to phase out the benefits of the 15 percent rate bracket and personal exemptions if his taxable income exceeded certain threshold amounts.

Under the 1990 Act, the phaseout of the personal exemptions is an additional adjustment separate and apart from the statutory tax rate structure. The deduction for personal exemptions is phased out as the taxpayer's adjusted gross income exceeds a threshold amount. The threshold amount is \$150,000 for a joint return or a surviving spouse; \$125,000 for a head of household; \$100,000 for a single individual who is not a surviving spouse or head of household; and \$75,000 for a married individual filing a separate return.

For tax years beginning after 1991, these amounts will be adjusted for inflation. The exemption amount for each exemption is phased out by two percent for each \$2,500 or fraction thereof, by which the taxpayer's adjusted gross income exceeds the applicable threshold amount; the phaseout rate is two percent for each \$1,250 for a married individual filing a separate return. This provision is effective for taxable years beginning after December 31, 1990, and before January 1, 1996. We will adopt these provisions [except for the disallowance of that part of an exemption attributable to the inflation adjustment] if our references to the Internal Revenue Code are updated to January 1, 1991. This provision of the Act will not create an additional statutory adjustment on the State return but will reduce the amount of the personal exemption inflation adjustment.

Itemized Deductions

Under federal law prior to the 1990 Act, individuals who do not elect the standard deduction may deduct certain nonbusiness expenses incurred during the taxable year. Among these deductible expenses are unreimbursed medical expenses, casualty and theft losses, charitable contributions, qualified residence interest, a portion of personal interest (ten percent in 1990; zero thereafter), state and local income tax and property taxes, moving expenses, unreimbursed employee business expenses, and certain other miscellaneous expenses.

Under the 1990 Act, a taxpayer is required to reduce the total of otherwise allowable nonbusiness deductions by three percent of adjusted gross income in excess of \$100,000, but the total otherwise allowable deductions (other than medical expenses, casualty and theft losses, and investment interest) may not be reduced by more than 80 percent. For taxable years beginning after 1991, the threshold amounts will be adjusted for inflation. These provisions do not apply to an estate or trust. The changes are effective for taxable years beginning after December 31, 1990, and will expire for taxable years beginning after December 31, 1995.

Medical Expense Deduction - Cosmetic Surgery

Under federal law prior to the 1990 Act, medical expenses include procedures that permanently alter any structure of the body, even if the procedure generally is considered to be an elective, purely cosmetic treatment.

Under the 1990 Act, expenses paid for cosmetic surgery or other similar procedures are not deductible medical expenses unless the surgery or procedure is necessary to correct or improve a deformity arising from, or directly related to a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease. If the expenses for cosmetic surgery are not deductible under this provision, amounts paid for insurance coverage for such expenses are not deductible, and reimbursement for such expenses under a health plan provided by an employer (including a flexible spending arrangement) is not excludable from gross income. These provisions are effective for taxable years beginning after December 31, 1990.

Medical Expense - Health Insurance

Under federal law prior to the 1990 Act, expenses for medical care, including health insurance premiums, are deductible by taxpayers who itemize deductions to the extent the expenses exceed 7.5 percent of adjusted gross income. The cost of health insurance provided by an employer is excludable from gross income. Self-employed individuals may deduct 25 percent of the health insurance premiums.

Under the 1990 Act, a new refundable income tax credit is available to taxpayers for qualified health insurance expenses that include coverage for a qualifying child. The amount of any expenses eligible for the medical expense deduction or health insurance deduction for the self-employed must be reduced by the amount of the allowable credit. This provision is effective for taxable years beginning after December 31, 1990. (Updating our references to the Internal Revenue Code will not cause us to adopt the tax credit; however, we would adopt the reduction in medical expenses by the amount of the tax credit.)

Employer-Paid Educational Assistance

Under federal law prior to the 1990 Act, an employee's gross income does not include employer-paid educational benefits up to \$5,250 annually under a qualified educational assistance program. The exclusion, which does not apply to graduate level courses, expired for taxable years beginning after September 30, 1990.

Under the 1990 Act, this exclusion is extended through taxable years beginning before January 1, 1992. The restriction with respect to graduate level courses is repealed effective for taxable years beginning after December 31, 1990.

Employer Group Legal Services Plan

Under federal law prior to the 1990 Act, amounts contributed by an employer to a qualified group legal services plan were excludable from the employees' gross income to the extent the employer-paid premiums did not exceed \$70 a year. This exclusion expired for taxable years beginning after September 30, 1990. Only amounts paid before October 1, 1990, in taxable years beginning in 1990 for coverage before October 1, 1990, are taken into account in determining the amount of the exclusion.

Under the 1990 Act, this exclusion is extended through taxable years beginning before January 1, 1992. The special rule limiting the exclusion in the case of taxable years beginning in 1990 is repealed. These provisions are effective for taxable years beginning after December 31, 1989.

Health Insurance Costs of Self-Employed Individuals

Under federal law prior to the 1990 Act, a self-employed individual is allowed a deduction for 25 percent of health insurance premiums paid provided he was not a participant in a subsidized health plan maintained by an employer. The 25 percent deduction expired for taxable years beginning after September 30, 1990. For taxable years beginning in 1990, the deduction is allowed only for premiums paid for coverage before October 1, 1990. An individual's earned income for the taxable year beginning in 1990 is prorated in determining the applicable deduction for the year.

Under the 1990 Act, the 25 percent deduction for health insurance costs of self-employed individuals is extended through taxable years beginning before January 1, 1992. The special rule prorating the deduction for taxable years beginning in 1990 is repealed. These provisions are effective for taxable years beginning after December 31, 1989.

Expenditures to Make Businesses Accessible to Disabled Individuals

Under federal law prior to the 1990 Act, a taxpayer may elect to deduct up to \$35,000 of certain architectural and transportation barrier removal expenses for the taxable year in which paid or incurred rather than capitalizing such expenses.

Under the 1990 Act, an eligible small business may elect a nonrefundable income tax credit equal to 50 percent of the amount of the "eligible access expenditures" for any taxable year that is over \$250 but not more than \$10,250. The amount of architectural and transportation barrier removal expenses that may be deducted for any taxable year is reduced from \$35,000 to \$15,000. The reduction in the amount of deductible architectural and transportation barrier removal expenses applies to taxable years beginning after November 5, 1990. Updating our references to the Internal Revenue Code to January 1, 1991, will not cause us to adopt the tax credit provision; however, we would adopt the \$15,000 limit for expenses for removing architectural and transportation barriers.

Percentage Depletion Allowance for Oil and Gas

Under federal law prior to the 1990 Act, certain persons owning economic interests in domestic oil and gas producing properties may deduct an allowance for depletion in computing taxable income. The percentage depletion allowance for oil and gas property is computed as a fixed percentage of the taxpayer's gross income from the oil or gas property. The percentage depletion is limited (on a property-by-property basis) to 50 percent of the taxpayer's net income from the property, computed without a deduction for depletion. The allowance for percentage depletion generally does not apply to interests in oil or gas properties that were transferred after December 31, 1974, by one taxpayer to another if, at the time of the transfer, the principal value of the property had been demonstrated by prospecting, exploration, or discovery work.

Under the 1990 Act, the net income limitation on oil and gas percentage depletion is increased from 50 percent to 100 percent of the net income from the property. The prohibition on percentage depletion on transferred proven oil and gas property is repealed. The statutory percentage depletion is increased by one percent (subject to a maximum rate increase of ten percent) for each whole dollar that the average domestic wellhead price of crude oil for the immediately preceding calendar year is less than \$20 per barrel but applies only to interests in marginally producing oil and gas wells (i.e., stripper wells or wells that produce heavy oil) held by independent producers or royalty owners. The provisions related to the net income limitation and the depletion rate for marginal properties are effective for taxable years beginning after December 31, 1990. The provision repealing the transfer rule is effective for property transfers occurring after October 11, 1990.

Enhanced Oil Recovery Costs

Under federal law prior to the 1990 Act, no tax credit is allowed for costs related to enhanced oil recovery projects.

Under the 1990 Act, a new domestic energy exploration and production tax credit is allowed as a component of the general business credit. The exploration and production credit is equal to 15 percent of qualified costs attributable to qualified enhanced oil recovery projects and to certain exploratory drilling in the United States. To the extent that a credit is allowed for these costs, the taxpayer must reduce the amount otherwise deductible or required to be capitalized and recovered through depreciation, depletion, or amortization. The tax credit is effective for taxable years beginning after December 31, 1990. Updating our references to the Internal Revenue Code to January 1, 1991, will not cause us to adopt the tax credit provision; however, we would adopt the provisions for reducing the deductible expenses and capitalized amounts by the amount of the tax credit.

APPENDIX F

Schedule B. License Taxes.

- 105-33. Taxes under this Article.
- 105-36. Amusements - Manufacturing, selling, leasing, or distributing moving picture films. Amend.
- 105-36.1. Amusements - Outdoor theatres.
- 105-37. Amusements - Moving pictures - Admission.
- 105-37.1. Amusements - Forms of amusement not otherwise taxed.
- 105-38. Amusements - Circuses, Menageries, wild west, dog and/or pony shows, etc.
- 105-40. Amusements - Certain exhibitions, performances, and entertainments exempt from license tax.
- 105-41. Attorneys-at-law and other professionals.
- 105-42. Private detectives and investigators.
- 105-45. Collecting agencies.
- 105-46. Undertakers and retail dealers in coffins. - Repeal.
- 105-50. Pawnbrokers.
- 105-51.1. Alarm systems. - Repeal.
- 105-53. Peddlers, itinerant merchants, flea market vendors and flea market operators. - Amend.
- 105-54. Contractors and construction companies.
- 105-55. Installing elevators and automatic sprinkler systems.
- 105-58. Fortunetellers, palmists, etc.
- 105-60. Day-care facilities.
- 105-61. Hotels, motels, tourist courts and tourist homes. - Repeal.
- 105-62. Restaurants. - Repeal.
- 105-65. Music machines.

- 105-65.1. Merchandising dispensers and weighing machines.
- 105-66.1. Electronic video games.
- 105-67. Security dealers.
- 105-70. Packinghouses. - Repeal.
- 105-72. Persons, firms, or corporations selling certain oils.
- 105-74. Pressing clubs, dry cleaning plants, and hat blockers. - Repeal.
- 105-75.1. Municipal license tax on barbershops and beauty salons.
- 105-77. Tobacco warehouses.
- 105-80. Firearms dealers and dealers in other weapons. - Repeal.
- 105-83. Installment paper dealers.
- 105-85. Laundries. - Repeal.
- 105-86. Outdoor advertising.
- 105-88. Loan agencies or brokers.
- 105-89. Automobiles, wholesale supply dealers and service stations. - Repeal.
- 105-89.1 Motorcycle dealers. - Repeal.
- 105-90. Emigrant and employment agents.
- 105-91. Plumbers, heating contractors, and electricians.
- 105-97. Manufacturers of ice cream. - Repeal.
- 104-98. Branch or chain stores. - Repeal.
- 105-99. Wholesale distributors of motor fuels. - Repeal.
- 105-102.1. Certain cooperative associations. - Repeal.
- 105-102.3. Banks.
- 105-102.5. General business license. - Amend.

